INDEX.

	PAGE
Petition for writ of *certiorari*	1
Reference to the Official and Unofficial Reports of the Opinions Delivered in the Courts Below	3
Statement of the Grounds on which the Jurisdiction of this Court is invoked	4
The Questions Presented for Review	5
Federal Statutes which this Case Involves	5
Statement of the Facts	9
Reasons relied on for allowance of the writ:	
I. The Rationale of the decision of the Court of Appeals for the Seventh Circuit in the instant case is in Direct and Irreconcilable Conflict with the Rationale of the decision of the Court of Appeals for the Fifth Circuit in *Brotherhood of Railroad Trainmen* vs. *Central of Georgia Railway*, 229 F 2d 901, on a very important question of Federal Railway Law that has not been but should be decided by this Court	13
II. The Purpose of the Railway Labor Act is to encourage but not to compel administrative settlement or determination of controversies between carriers and labor and to discourage but not to forbid strikes as an alternative means of resolving such conflicts	16
III. Even if the National Railway Labor Act was intended to inhibit strikes over minor grievances, it was not the intention of Congress so far to repeal the Norris-LaGuardia Act as to implement that inhibition by Federal injunctions	23
Conclusion on the merits	33
IV. This case is of sufficient importance to elicit *certiorari*	34
Prayer for *Certiorari*	35

Authorities Cited.

Brotherhood of RR Trainmen v. Central of Georgia, 229 F. 2d 901 ..... 3, 13, 22, 34, 46

Brotherhood of RR Trainmen v. Howard, 343 U.S. 768 30

Chicago River and Indiana RR Co. v. Brotherhood of RR Trainmen, 229 F. 2d 926 ..... 3, 13, 37

Cook County Natl. Bank v. U.S., 107 U.S. 445, 27 L. Ed. 537 32

East Texas Motor Freight Lines v. Teamsters, 163 F. 2d 10 25

Elgin, Joliet and Erie Ry. Co. v. Burley, 325 U.S. 711, 89 L. Ed. 1886 31

Graham v. Brotherhood, 338 U.S. 232 28

General Comm. v. M.K.T.R. Co., 320 U.S. 325 26

General Com. v. Southern Pac. R. Co., 320 U.S. 338 26

Milk Wagon Drivers Union v. Lake Valley Farm Products, 311 U.S. 91 24

Order of Ry. Conductors v. Pitney, 326 U.S. 561, 90 L. Ed. 318 30

Order of Ry. Conductors v. Southern Ry. Co., 339 U.S. 255, 94 L. Ed. 811 32

Slocum v. Del., Lakawanna & Western RR Co., 399 U.S. 239, 94 L. Ed 795 31

Switchmen's Union v. Natl. Mediation Bd. 320 U.S. 297 26

Texas and N.O. RR Co. v. Brotherhood, 281 U.S. 548 29

Virginian Ry. Co. v. System Federation No. 40, 300 U.S. 515 ..... 28, 30

Wilson v. Birl, 105 F. 2d 948 25

Appendices.

I—Chicago River and Indiana R Co. v. Brotherhood of RR Trainmen, 229 F. 2d 926 37

II—Brotherhood of RR Trainmen v. Central of Georgia, 229 F. 2d 901 46

III—District Court's findings, conclusions and judgment 61

IV—Memorandum opinion, Chicago River and Indiana R Co. v. Brotherhood of RR Trainmen, No. 11745, U.S.C.A., entered May 17, 1956, not yet reported 67

Statutes Cited.

Federal Judicial Code, U.S.C.A. Title 28, Sec. 1254, 62 Stat. 928 5

Sec. 1331 9

National Railway Labor Act, 45 U.S.C.A., Secs. 1 to 3, Sec. 151a (2) 44 Stat. 577, 48 Stat. 926, 1185, 1186, 54 Stat. 785, 62 Stat. 991, 63 Stat. 107, 64 Stat. 1238 .....2,5,6,13, et seq.

Norris-LaGuardia Act, U.S.C.A. Title 29, Secs. 101, 1, 4 and 13, 47 Stat. 70 and 73 .....7,13, et seq.

House Hearings, 73rd Cong. 2d session, on H. R. 7650, p. 58 18

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1956.

No.

BROTHERHOOD OF RAILROAD TRAINMEN, etc., et al.,

Petitioners,

vs.

CHICAGO RIVER AND INDIANA RAILROAD COMPANY, et al.,

Respondents.

PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioners, Brotherhood of Railroad Trainmen, a national railway labor union, and five other petitioners named and identified in the margin,[1] seek this Court's writ of *certiorari* to review the final decision and judgment of the United States Court of Appeals for the Seventh Circuit holding

[1] Brotherhood of Railroad Trainmen Lodge No. 964; Felix E. Kazmer, general chairman, Lodge No. 964; Michael V. Smalley, secretary, Lodge No. 964; George C. Hofer, committeeman, Lodge No. 964; and W. M. Dolan, vice president, Brotherhood of Railroad Trainmen.

that respondents, the Chicago River and Indiana Railroad Company and 27 other railroads named in the margin[2] were entitled to a permanent injunction restraining a threatened strike arising out of petitioners' and respondents' failure to reach an agreement settling 21 past minor grievances and claims asserted by individual members of the Brotherhood.

The Court of Appeals for the Seventh Circuit held, rejecting petitioners' contentions to the contrary, *first*, that the National Railway Labor Act (45 U. S. C. A. Secs. 1, 44 Stat. 577, 48 Stat. 926, 48 Stat. 1185, 54 Stat. 785, 62 Stat. 991, 63 Stat. 107) interdicts strikes over "minor" as distinguished from strikes over "major" grievances as those terms are used in railway labor parlance and, *second*, that, in the language of the Court, the National Railway Labor Act

> "operates to repeal the provisions of the Norris-LaGuardia Act [Tille 29, U.S.C.A., §101, Sec. 1, 47 Stats. 70], to the extent that the wording thereof might otherwise be said to apply to such railway labor disputes".

This holding of the Court of Appeals for the Seventh Circuit in the instant case was pronounced on February 6, 1956, on an appeal from a decision and judgment of the Dis-

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[2] The Atchison, Topeka and Santa Fe Railway Company; the Baltimore and Ohio Railroad Company; The Baltimore and Ohio Chicago Terminal Railroad Company; The Belt Railway Company of Chicago; The Chesapeake and Ohio Railway Company (C & O District); The Chesapeake and Ohio Railway Company (Pere Marquette District); Chicago & Eastern Illinois Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railway Company; Chicago, Indianapolis and Louisville Railway Company; Chicago Junction Railway Company; Chicago, Milwaukee, St. Paul and Pacific Railroad Company; Chicago, Rock Island & Pacific Railroad Company; Elgin, Joliet and Eastern Railway Company; Erie Railroad Company; Grand Trunk Western Railroad Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; Illinois Northern Railway Company; Indiana Harbor Belt Railroad Company; The Minneapolis, St. Paul & St. Ste. Marie Railroad Company; The New York Central Railroad Company; The Pennsylvania Railroad Company; and Wabash Railroad Company Corporations.

trict Court for the Northern District of Illinois to the contrary (cause No. 11474, R. 30-31) and was adhered to on appeal from a final decree of the district court rendered in favor of respondents on remandment (Cause No. 11745, R. 15-16).

On February 10, 1956, five days after the announcement by the Court of Appeals for the Seventh Circuit of its view, the Court of Appeals for the Fifth Circuit held in *Brotherhood of Railroad Trainmen* v. *Central of Georgia Ry. Co.*, 299 F. 2d 901, opinion and dissent reprinted in full, Appendix II, *post* (Brown, J. dissenting) that the Railway Labor Act does not repeal, limit or otherwise abridge the withdrawal by the Norris-LaGuardia Act of Federal jurisdiction to enjoin strikes in the area of railway labor, the Court declaring (229 F. 2d 901, at 909):

> "If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided."

The Central of Georgia has sought this Court's writ of *certiorari*. (*Central of Georgia Ry. Co.* v. *Brotherhood of Railroad Trainmen*, October Term, 1955, No. 935.) That petition is still pending.

Reference to the Official and Unofficial Reports of the Opinions Delivered in the Courts Below.

The first opinion of the Court of Appeals in the instant case, rendered on respondents' appeal from a judgment dismissing their action on the merits but continuing in force pending appeal a temporary injunction theretofore rendered, is reported in 229 F. 2d at pages 926 to 938, and

is reprinted in full as Appendix I to this petition, at pp. 37 to 45, *post*.

The Court's final memorandum opinion and judgment, in which the Court of Appeals adheres to its views on the substantive merits of the case, is not yet officially reported. It is reprinted in full as Appendix II, pp. 46 to 61, *post*.

The District Court rendered no opinions in this case. That court's original findings, conclusions and judgment are reprinted as Appendix III to the petition, pp. 61 to 67, *post*.

That court's final findings, conclusions and judgment, rendered in obedience to the opinion and mandate of the Court of Appeals on the first appeal, are reprinted as Appendix IV, at pp. 67 to 68, *post*.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The final judgment of which review is sought was entered on May 17, 1956. No petition for rehearing was filed.

In its final memorandum opinion, the Court of Appeals referred and adhered to the views expressed in its non-final opinion, reversing and remanding the District Court's first judgment.

The first opinion and judgment of the Court of Appeals in this case were rendered on February 6, 1956. Rehearing was denied on March 5, 1956. It will be noted that since the first judgment was one of remandment for further proceedings, it was not final. Although this Court would of course have had technical jurisdiction to review it, the issues were not then ripe for adjudication.

This Court's jurisdiction is invoked under Section 1254 of the Federal Judicial Code (U. S. C. A., Title 28, Sec. 1254, 62 Stat. 928).

THE QUESTIONS PRESENTED FOR REVIEW.

The questions presented for review are:

1. DOES THE LABOR RAILWAY ACT PROHIBIT THE STRIKE ADMITTEDLY THREATENED BY PETITIONERS, WHICH STRIKE, HAD IT NOT BEEN PREVENTED BY THE INJUNCTIVE ORDERS IN THIS CASE, WOULD HAVE ARISEN OUT OF CONCEDEDLY "MINOR GRIEVANCES" OF 21 MEMBERS OF PETITIONERS' BROTHERHOOD OF RAILROAD TRAINMEN?

2. IF THE ANSWER TO QUESTION NO. 1 ABOVE STATED IS "YES", DOES THE RAILWAY LABOR ACT SO FAR REPEAL THE PROVISIONS OF THE NORRIS-LAGUARDIA ACT AS TO RE-INVEST FEDERAL COURTS WITH JURISDICTION TO ENJOIN THE THREATENED STRIKE, AS RESPONDENTS CONTEND AND AS THE COURT OF APPEALS HAS HELD, OR DOES IT, AS PETITIONERS CONTEND, LEAVE RESPONDENTS TO SUCH OTHER REMEDIES AS MAY EXIST?

FEDERAL STATUTES WHICH THIS CASE INVOLVES.

This case involves the effect, if any, of the Railway Labor Act upon the Norris-LaGuardia Act with respect to strikes or threats of strikes over past minor grievances and claims.

The pertinent provisions of the Railway Labor Act and the Norris-LaGuardia Act are as follows:

(1) *Railway Labor Act*

Section 1a of the Railway Labor Act (Title 45 U.S.C.A., Section 151a, § 2, 44 Stats. 577; § 2, 48 Stats. 1186) provides: "The general purposes of the chapter are: (1) To avoid any interruption to commerce or to the opera-

tion of any carrier engaged therein; * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions."

Section 2 First of the Railway Labor Act (Title 45 U. S. C. A., Sec. 152 First) provides: "It shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Section 2, Second, of the Railway Labor Act (Title 45 U. S. C. A., Sec. 152 Second, § 2, 44 Stats. 577, § 2, 48 Stats. 1186, § 1, 62 Stats. 909, 64 Stats. 1238), provides: "All disputes between a carrier or carriers, and its or their employees shall be considered, and, if possible, decided with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

Section 3, First, (i) of the Railway Labor Act (Title 45 U. S. C. A., Sec. 153 First (i) § 2, 44 Stat. 577, § 2, 48 Stat. 1186, § 1, 62 Stat. 909, 64 Stat. 1238) provides: "The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the intepretation or application of agreements concerning rates of pay, rules or working conditions, * * *, shall be handled

in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

(2) *Norris-LaGuardia Act*

Section 1 "No court of the United States, as defined in Sections 101-115 of this Title, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy in such sections." (Title 29, U. S. C. A. Section 101, Section 1, 47 Stat. 70)

Section 4 "No Court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment." (29 U. S. C. Sec. 104, Sec. 4, 47 Stat. 70).

Section 13 "When used in Sections 101-115 of this Title, and for the purposes of such sections—(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect

interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section)." (Title 29 U. S. C. Sec. 113 Sec. 13, 47 Stat. 73).

STATEMENT OF THE FACTS.

All quotations in the following Statement of the Facts are from the language of the first opinion of the Court of Appeals in this case, adhered to on the second opinion.

Respondents, "Chicago River and Indiana Railroad Company and 27 other railroads prayed for an injunction to restrain the Brotherhood of Railroad Trainmen from calling a threatened strike against the River Road."

Federal jurisdiction was asserted because the suit is claimed to arise under the laws of the United States and involves more than $3000 exclusive of interest and costs. (28 U. S. C. A. 1331.)

The purpose of the threatened strike would be "to settle 21 grievances and claims through collective bargaining", that is, through consummation of the threatened strike and settlement thereof, "rather than by award of the National Railroad Adjustment Board."

The District Court "granted a restraining order which was later dissolved when the Court" (the District Court) "decided that the Norris-LaGuardia Act was applicable and, therefore, it lacked jurisdiction to grant the relief sought."

But that Court "subsequently granted an injunction" restraining the threatened strike "pending the determination of this appeal, which was taken from the judgment of dismissal."

The Court of Appeals thus correctly summarizes the substance of the alleged grievances of the River Road (p. 928):

> "The grievances of the employees involved are 19 claims for additional compensation, 1 claim for reinstatement to a higher position, and 1 claim for reinstatement to the employ of the River Road. Each of these claims was presented to the railroad superintend-

ent who handles such cases. Each was appealed to the highest railroad officer designated to handle claims under § 3, First (i) of the Railway Labor Act, 45 U. S. C. A. § 153, First (i), and was denied by him."

Respondents' complaint alleges and petitioners do not now gainsay that "this strike would halt the operations of all trains into and out of the Chicago Stockyards, force the River Road to lay off 1,100 employees, who would lose in excess of $12,000 a day in wages, cost the company thousands of dollars a day, and require the embargo of all shipments into and out of the Stockyards, causing irreparable damage to the 27 railroads (the other plaintiffs) and the 600 industries served" as well as entailing other damage.

In the light of these facts, initially controverted by petitioners below for want of information and belief as to the extent of damage but now conceded for all purposes in this case, petitioners have contended and still contend and respondents have controverted and still controvert the two following propositions of Federal statutory law:

1. THE INTENT OF THE RAILWAY LABOR ACT IS TO MINIMIZE BUT NOT TO PROHIBIT STRIKES IN THE AREA OF RAILWAY LABOR BY PROVIDING ATTRACTIVE BUT NOT COMPULSORY ADMINISTRATIVE PROCESSES AS ALTERNATIVE TO SUCH STRIKES. THIS IS TRUE AS TO STRIKES OVER PAST MINOR INDIVIDUAL GRIEVANCES AS WELL AS WITH RESPECT TO STRIKES FOR FUTURE BENEFITS.

2. EVEN IF THE NATIONAL RAILWAY LABOR ACT MUST BE CONSTRUED AS PROHIBITING STRIKES OVER MINOR GRIEVANCES, IT DOES NOT REPEAL, AMEND OR ABRIDGE THE NORRIS-LAGUARDIA ACT, WHICH WITHDRAWS FROM FEDERAL COURTS THE JURISDICTION TO ENJOIN STRIKES SUCH AS THE STRIKE THREATENED IN THIS CASE. ON THE CONTRARY, THE NATIONAL RAILWAY LABOR ACT, EVEN IF CONSTRUED AS INTERDICTING SUCH STRIKES, DOES NOT RE-INVEST DISTRICT COURTS WITH JURISDICTION TO ENJOIN SUCH STRIKES

BUT LEAVES THE CARRIERS AND THE GOVERNMENT TO SUCH REMEDIES, CIVIL OR CRIMINAL, AS MAY EXIST OTHERWISE THAN BY INJUNCTION.

As we have noted, the District Court initially sustained petitioners' contention that the Norris-LaGuardia Act was not repealed *pro tanto* by the National Railway Labor Act and therefore dismissed respondents' suit (Appendix III, *post*).

But, as noted in the first of the Court of Appeals, the District Court continued in effect a previously granted temporary injunction during the pendency of respondents' appeal.

The Court of Appeals reversed and remanded the cause for further proceedings.

As we have observed *ante*, this judgment of the Court of Appeals, which remanded this cause for further proceedings in the District Court, was not final and could have elicited *certiorari* only as an extraordinary judicial measure, the issues of fact as then delineated by the pleadings not having been adjudicated.

Upon this remandment petitioners filed an express disclaimer of all contentions of law or fact save the two contentions stated above, namely, that the National Railway Labor Act does not prohibit strikes of any kind, including strikes over minor grievances such as those involved in this case, and that even if it does prohibit such strikes, it does not so far repeal the Norris-LaGuardia Act as to authorize an injunction as alternative to other remedies or sanctions in the event of such a strike or threatened strike (R 11745, p. 9).

Of course the District Court entered a judgment of injunction in the light of the opinion and judgment of the Court of Appeals restraining the threatened strike. (*District Court's Findings.* Appendix III, p. 66.)

Petitioners appealed from this final judgment and on appeal reaffirmed their contentions. The Court of Appeals, adhering to its prior opinion and judgment, has affirmed the District Court's judgment of injunction (Appendix IV, p. 67.)

It is to review this affirmance that petitioners now seek this Court's writ of *certiorari.*

Jurisdiction of the District Court was invoked by respondents under the provisions of the National Railway Labor Act and was denied by petitioners under the provisions of the Norris-LaGuardia Act.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

I.

THE RATIONALE OF THE DECISION OF THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT IN THE INSTANT CASE IS IN DIRECT AND IRRECONCILABLE CONFLICT WITH THE RATIONALE OF THE DECISION OF THE COURT OF APPEALS FOR THE FIFTH CIRCUIT IN BROTHERHOOD OF RAILROAD TRAINMEN VS. CENTRAL OF GEORGIA RAILWAY, 229 F. 2d 901, ON A VERY IMPORTANT QUESTION OF FEDERAL RAILWAY LAW THAT HAS NOT BEEN BUT SHOULD BE DECIDED BY THIS COURT.

The direct conflict of the holding of the Court of Appeals for the Seventh Circuit in this case with the holding of the Court of Appeals for the Fifth Circuit in *Central of Georgia* case (229 F. 2d 901) instantly emerges from the following two contrasting passages of the two opinions.

In the instant case, the Court of Appeals for the Seventh Circuits said (229 F. 2d at page 933):

> "Insofar as the Railway Labor Act, as we now interpret it, authorized the issuance of injunctions to prevent strikes over minor disputes, it operates to *repeal* the provisions of the Norris-LaGuardia act, to the extent that the wording thereof might otherwise be said to apply to such railway labor disputes. It follows that, in the case at bar, the district court has jurisdiction to entertain plaintiffs' prayer for injunctive relief." (Emphasis supplied.)

But the Court of Appeals for the Fifth Circuit said in the *Central of Georgia* case (229 F. 2d at p. 905):

> "If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided. Indeed, in General Committee of Adjustment, 320 U. S. 323, 64 S. Ct. 146, 88 L. Ed. 76, the Supreme Court expressly held that the Mediation Board's determination of such a controversy was not justiciable. In the light of that decision, appellee is under a burden too heavy to be borne when it seeks to justify the judicial remedy sought and obtained here by invoking a jurisdiction which the Norris-LaGuardia Act expressly withdraws from the Federal Courts."

Continuing, the Court of Appeals for the Fifth Circuit said in the *Central of Georgia* case at p. 905

> "In short, all that is for decision on this appeal is whether the Railway Labor Act has expressly or impliedly *repealed* the provisions of the LaGuardia Act, denying jurisdiction to courts to enjoin strikes or work stoppages." Emphasis supplied.

Resolving in the negative the question stated in the language quoted above, the Court of Appeals for the Fifth Circuit reversed a decree of injunction granted by the District Court.

It thus appears that the Court of Appeals for the Seventh Circuit has held that the National Railway Labor Act does, whereas the Court of Appeals for the Fifth Circuit has declared that that Act does not, repeal, amend or abridge the Norris-LaGuardia Act so as to restore to Federal courts some measure of jurisdiction *via* injunction over disputes in the area of railway labor.

We are not unmindful of a difference in the facts, urged by counsel for the Brotherhood in resistance to *certiorari* in the *Central of Georgia* case and stressed by counsel for the railroads in resistance to rehearing in the instant case, which might be sufficient to distinguish the cases *if the difference in the facts had been recognized or relied on by either Court of Appeals in achieving its ultimate conclusion.*

That distinction, briefly stated, is that in the *Central of Georgia* case, the threatened strike was proposed in order to obtain a modification of the Cheney award, which modification, if effected, would apply generally to employees in the future, whereas the strike proposed in the instant case was threatened in order to force a settlement of the alleged past grievances of individual employees without resort to administrative process.

But neither the Court of Appeals for the Seventh Circuit nor the Court of Appeals for the Fifth Circuit, nor did the District Court in either the *Central of Georgia* case or in the instant case, even intimate, much less posit, reliance upon this factual difference as a basis for construing the National Railway Labor Act or the Norris-LaGuardia Act.

On the contrary, as the excerpts quoted above show and as is, if possible, even more clear by a comparative reading of the full opinions in both of the cases, the Court of Appeals for the Fifth Circuit has held that the Norris-LaGuardia Act is untouched by the National Railway Labor Act, whereas the Court of Appeals for the Seventh Circuit has held the direct contrary of this proposition.

Moreover in both cases the carrier relied upon the creation of the National Railroad Adjustment Board by the 1934 Amendment as an implied outlawry of strikes over disputes that would be referrable to that Board.

As we demonstrate in the remainder of this petition, this Court has never passed on the question whether, in a suit

between railroad employees and their employers in which a strike was threatened, the National Railway Labor Act abridges the Norris-LaGuardia Act although it has considered disputes arising between competing unions or a union and non-union members in which an injunction was sought[3] and has dealt with questions where railway *employees*, not employers, have sought injunctive relief.[4]

II.

THE PURPOSE OF THE RAILWAY LABOR ACT IS TO ENCOURAGE BUT NOT TO COMPEL ADMINISTRATIVE SETTLEMENT OR DETERMINATION OF CONTROVERSIES BETWEEN CARRIERS AND LABOR AND TO DISCOUAGE BUT NOT TO FORBID STRIKES AS AN ALTERNATIVE MEANS OF RESOLVING SUCH CONFLICTS.

We may thus briefly state the essence of the first of petitioners' only two contentions:[5]

---

[3], [4] Cases relied upon by the Court of Appeals for the Seventh Circuit, respondents in the instant case, and the Central of Georgia Railway Company in the *Central of Georgia* case are cited, considered and clearly distinguished in the closing passages of the Reasons Relied on for Allowance of the Writ, *post*.

[5] Petitioners' contention that the Congress did not intend by the Railway Labor Act to prohibit strikes of any kind is logically distinct from their contention that even if that Act was intended to enact such a prohibition, it was not the intention of the 1934 amendment to repeal *pro tanto* the Norris-LaGuardia Act but was the intention of Congress to remit the carriers and the government to such other remedies, civil or criminal, as might be otherwise available.

However, although the propositions are logically distinct, considerations of policy, materials of legislative history and arguments as to construction of the National Railway Labor Act are common to a discussion of both propositions.

Hence most of the presentation made by petitioners under the instant Point II, devoted to the proposition that the Railway Labor Act does not forbid strikes, is relevant under Point III, *post*, which is devoted to arguing that even if the National Railway Labor Act was intended to forbid strikes, it does not implement that prohibition by restoring injunctive jurisdiction to Federal Courts.

The legislative process that finally eventuated in the enactment of the National Railway Labor Act was indeed, as the Court of Appeals correctly recognizes, the expression of a very real Congressional desire to minimize strikes in the area of railway transportation. Such strikes are costly to railroads, to the public and to labor itself. No one—certainly not labor, which is the segment of the national economy that first feels the pinch of missing pay envelopes—would gainsay the desirablility of *fairly and promptly* resolving disputes between working men and their employers by means other than strikes.

The question that so evidently confronted the Congress was, "Granted that we wish to minimize strikes, which are the most drastic economic sanction available to labor short of unlawful violence, shall we achieve that end by interdicting strikes, either by direct congressional prohibition or by an attenuation of the Norris-LaGuardia Act, or shall we dissuade *but not prohibit* railway labor from striking by providing an attractive *but not compulsory* alternative to the strike as a legitimate means of economic campaign?"

That Congress was acutely and intensely aware of this important question is as evident from the legislative materials relied upon by the plaintiff railroad as it is from those relied upon by the defendant Brotherhood.

To be sure, the excerpts from legislative history invoked by the plaintiff point in one direction. The legislative materials relied upon by the Brotherhood point in a diametrically opposite direction. But all of the legislative history indicates that Congress was aware, not oblivious of the very obvious question, "Shall we or shall we not forbid strikes?"

That Congress intended to discourage *but did not intend to prohibit* strikes and that Congress certainly did not intend to re-invest Federal courts with jurisdiction to *enjoin*

strikes seems clear to us from the following passages of legislative history:

Congressman Pettengill stated at the House Hearings (House Committee on Interstate and Foreign Commerce, 73rd Cong. 2nd Sess. on H. R. 7650) at p. 58:

> "Well, I know that we all induge the *hope* that matters as important to the public as uninterrupted train service shall not be interrupted, if possible, and that means shall be provided so that those strikes may not happen; *but I am not prepared to go so far as to say that labor shall, by law, be required to abandon that ancient weapon which has been recognized by the Supreme Court over and over again.*" (Emphasis supplied.)

Congressman Cooper of the Committee voiced similar sentiments (at pp. 60, 61).

At this point, there occurred the only discussion on the specific question before this Court which is whether a Federal court has jurisdiction to enjoin a strike over grievances.

Commissioner Eastman, draftsman of the 1934 amendments, when asked by Congressman Wolverton whether the bill contained any provision that would enable the court to obtain an injunction against a labor organization, replied:

> "Well, I am not able to give you an answer to that. That is a legal question to be frank with you, that I have not gone into." (At p. 61.)

Later Eastman stated (again at p. 61):

> "Now the only question I am in doubt about is whether or not there should be an injunction under this Act to prevent a strike. Now, I am not clear about that."

Mr. Carmalt, Eastman's legal adviser, said,

> "Now, the question of strike had not arisen in connection with it until this morning (referring to the power of courts to enjoin strikes over grievances) at p. 63.

"Mr. Wolverton: Is it your opinion that there should be such a provision in the bill or not?

"Mr. Carmalt: I hesitate to talk effectuating a policy in that regard.

"Mr. Wolverton: I am only asking you to express your opinion."

Carmalt then continues:

"I would not say that it (the bill) gives any authority in that regard (whether an injunction could issue to prevent an organization from going on strike), because it was assumed that would be true, I think, but there has been no discussion of it until this morning" (at p. 63).

Commissioner Eastman then took up the colloquy:

"Commissioner Eastman: I may say, so far as I am concerned, it had not seemed to me that matter was of a contingency of importance, because I cannot conceive of organizations striking over the settlement of grievances, particularly when they had been passed upon by an impartial tribunal under Government auspices.

"It is serious enough thing to strike when a major matter is involved; but when you have only minor grievances and they have had full opportunity to be heard and have had their day in court before a tribunal, it hardly seems to me that that was a question that was likely to arise. *My own idea would be, let that question arise out of experience and find out whether there is actual need for any such power before you provide for issuing injunctions for preventing strikes.*

The above excerpts are Commissioner Eastman's *final* remarks concerning the problem as to whether strikes are enjoinable under Section 153 of the Railway Labor Act. Eastman's statement that experience should determine "whether there is actual need for any such power before you provide for issuing injunctions for preventing strikes" declares the opinion of the draftsman of the 1934 Amendments of the

Railway Labor Act to be that the act did *not* provide "for issuing injunctions for preventing strikes."

We recognize, as noted in the opinion of the Court of Appeals for the Seventh Circuit in the instant case, that one Harrison, a legislative representative of petitioner Brotherhood, said at a hearing before a Senate Committee on the Bill for the 1934 Amendments that:

> "We are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make."

In the first place, petitioner is not bound by the statements of its legislative representative although concededly such statements are material legislative history.

In the second place, Mr. Harrison's views, those of a laboring man, should not be given weight equal to that accorded to the deliberate expressions of Commissioner Eastman, a man of vast experience in the impartial position of member of the Interstate Commerce Commission, who was largely the architect of this important measure.

But to us, so far as legislative history is pertinent, the paramount consideration is, not the opinion of any spokesmen for or opponent of any version of legislative draftsmanship that was ultimately merged in the National Railway Labor Act, but the fact that spokesmen for, opponents of, and presumably neutrally inquiring critics of the bill all perceived the presence and importance of the question whether strikes of any kind were to be prohibited and, *having perceived the question, appreciating its importance and being fully cognizant of the provisions of the Norris-LaGuardia Act enacted only about two years previously, refused to enact into law any repeal of that important statute!*

We can put the matter thus tersely:

Congress knew that the Norris-LaGuardia Act withdrew from Federal courts the jurisdiction to enjoin strikes of the kind involved in this case. It knew that the National Railway Labor Act, both as proposed and as enacted, was intended to discourage strikes. It was aware of the question whether the National Railway Labor Act, if amended, would or would not, should or should not, repeal, amend or abridge the Norris-LaGuardia Act.

Cognizant of that question and of its very great moment, Congress with measured deliberation failed to answer the question.

It is thus clear that Congress had no active intention to repeal the Norris-LaGuardia Act and therefore must have intended to continue it in force.

Congress was aware, both at the time of the enactment of the Norris-LaGuardia Act and at the time of the enactment of the National Railway Labor Act, of the history of injunctions against strikes in both State and Federal courts. It was aware, not presumably but actually, of the debates in the arenas of economics, practical and ideal politics and social ethics as to whether labor has or should have the "right to strike" and as to whether even if labor is not to possess that right, the right shall be abridged by injunction and the drastic sanctions of contempt proceedings, with or without trial by jury, even where the strike is concededly unlawful, contrary to public policy or not in the interests of public welfare.

Having pondered these momentous issues, Congress uttered the National policy explicit in the Norris-LaGuardia Act.

The teachings of this Court's leading decisions expository of the Norris-LaGuardia Act were thus incisively summarized and their impact appraised, correctly, we submit,

by the Court of Appeals for the Fifth Circuit in the *Central of Georgia* case in the following language:

> "For, as has been held time and again, the purpose of the strike, whether it is or is not legal, is not a limitation upon the prohibitions of the statute. *Cf. Wilson & Co.* v. *Birl*, 105 F. 2d 948, and *East Texas Motor Freight Lines* v. *Teamsters*, 163 F. 2d 10, where this court held that such a contention was an attempt to enlarge Federal Court jurisdiction as limited by the Act. *Cf. Milk Wagon Drivers Union* v. *Lake Valley Farm Products*, 311 U. S. 91, and 43 C. J. S. 748 and 29 A. L. R. (2) 360."

The Norris-LaGuardia Act is not only directly inhibitory of the injunctive process against even unlawful strikes but is strongly confirmatory of the substantive right to strike in the general case, that is, where the right to strike is neither attended by or intended to coerce unlawful action.

Extreme reactionaries, like extreme radicals, would impress the service of labor by coercive measures, injunctive in form and summary in sanction.

Congress, however, gave enactment to a median philosophy: It was the will of Congress that the right to strike should not be abridged, *at least by injunction*, at the behest either of a capitalistic employer or of a socialist state.

It is this philosophy that, so respondents contend and so the Court of Appeals for the Seventh Circuit has held, succumbed to implied repudiations *only as to railway labor* two years after it was enacted.

And this is true, so respondents contend and so the Court of Appeals below has held, although the "repeal" was achieved by cryptic intimation, not by overt declaration, although Congress explicitly pondered and debated the matter!

Surely, had Congress intended a retraction of the policy of the Norris-LaGuardia Act, it would have so declared in unmistakable terms.

Is this connection, we deem it important to observe and strongly emphasize that it is not enough to grant that Congress had no active intention to continue in effect the policy of the Norris-LaGuardia Act. It must clearly appear that Congress had an active and affirmative intention to repeal this Act before the Act may be said to be repealed by implication.

III.

EVEN IF THE NATIONAL RAILWAY LABOR ACT WAS INTENDED TO INHIBIT STRIKES OVER MINOR GRIEVANCES, IT WAS NOT THE INTENTION OF CONGRESS SO FAR TO REPEAL THE NORRIS-LaGUARDIA ACT AS TO IMPLEMENT THAT INHIBITION BY FEDERAL INJUNCTIONS.

Under Point II of these Suggestions, *ante*, we have, we believe, demonstrated that it was not the intention of Congress to proscribe the right to strike at all even though it was the intention of that Act to provide an attractive alternative to the exercise of that right.

But even if it be assumed *arguendo* that Congress intended to prohibit strikes by railway labor, it does not follow without express congressional utterance that Congress intended to implement that prohibition by restoring the right to injunction.

Even where a strike is or may be plainly illegal, the Norris-LaGuardia Act (unless amended *pro tanto* by the tenuous inferences drawn by the Court of Appeals for the Sev-

enth Circuit) withdraws Federal jurisdiction to grant an injunction.

In *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91, the Court said at p. 102:

> "The Norris-LaGuardia Act, passed in 1932, is the culmination of a bitter political, social and economic controversy extending over half a century. Hostility to 'government by injunction' had become the rallying slogan of many and varied groups."

Summing up its conclusions, the Court said at page 103:

> "For us to hold in the face of this legislation, that the federal courts have jurisdiction to grant injunctions in cases growing out of labor disputes, merely because alleged violations of the Sherman Act are involved, would run counter to the plain mandate of the Act and would reverse the declared purpose of Congress."

The reasoning of the Court of Appeals for the Seventh Circuit in the instant case was that (1) the threatened strike, if consummated, would contravene the policy enacted by the National Railway Labor Act, a premise that petitioners concede only to the limited extent and in the restricted sense that it was the intent of the National Railway Labor Act to discourage strikes but not to prohibit them, (2) hence the strike violated the provisions of the National Railway Labor Act, a proposition that petitioners resist and (3) therefore injunctive remedy was available even though the Court found it necessary to imply a repeal *pro tanto* of the Norris-LaGuardia Act.

Even if it be conceded, and it is not conceded, that the strike violated the National Railway Labor Act, it would not follow that *injunctive* remedy is available. It is not novel jurisprudence to withhold remedy by injunction or, indeed, any other or all equitable remedies although violations of common law, statutory or even constitutional rights are clear and admitted.

This is so even when rights at common law or criminal sanctions are plainly inadequate to vindicate the substantive rights of the complaining parties.

In the fields of racial segregation, antitrust law, unfair trade and many other fields of law intended to preserve the rights of the public, as well, of course, as in many cases involving contractual and other private rights where only the interests of the immediate parties are involved, there is nothing new in withholding injunctions, judgments for specific performance or other equitable relief although violations of legal rights are palpable and an action for damages is clearly inadequate.

Congress may well deem the Draconian remedy of injunction a cure worse than the disease of occasional irresponsible, even illegal, strikes.

This philosophy has found express application under the Norris-LaGuardia Act.

In each of the following cases a United States Court of Appeals has either recognized or assumed that a strike would be illegal and yet has held that the Norris-LaGuardia Act inhibits injunction:

> *East Texas Motor Freight Lines* v. *Teamsters,* 163 F. 2d 10 (C. A. 5, 1947), holding that a claim that the Act sought to be enjoined violated the Motor Carriers' Act, even if well founded, would not support jurisdiction to issue an injunction.
>
> *Wilson* v. *Birl,* 105 F. 2d 1948, in which the Court said at page 952:
>
> "Moreover, the words 'unlawful acts' in Section 7 (a), which must be alleged in the complaint and included in the findings, cannot be read separately from the rest of the section, and assume appropriate meaning only when we consider the section as a whole. Irreparable injury to the complainant's property, which has no police protection, is an essential averment and finding; and the 'unlawful acts' do not constitute a

general reference to anything that may be considered illegal, but specifically to the acts of violence which the authority of the executive is calculated to control."

In this case, too, it was held that the threatened strike would involve both the employer and the employees in violation of the Federal Motor Carriers' Act. However, the Court said at page 934:

"But whatever other remedies may or may not be available, there is nothing in the exactions of the Motor Carrier Act which operates to enlarge beyond the limitations of the Norris-LaGuardia Act the jurisdiction of a United States Court in respect to the issuance of a restraining order or a temporary or permanent injunction in a controversy involving or growing out of a labor dispute.

Most pertinent are this Court's decisions in *General Committee* v. *M. K.-T. R. Co.*, 320 U. S. 325, and in the companion cases decided the same day, *Switchmen's Union* v. *Natl. Mediation Bd.*, id. 297, and *General Committee* v. *Southern-Pac. R. Co.*, id. 338.

In all of those cases disputes between rival labor organizations, unresolved by the apparatus provided by the National Railway Labor Act, resulted in suits for injunction.

This Court declined to reach the merits in those cases because it held that Federal jurisdiction of equitable character was absent.

The Court, after adverting tersely but comprehensively to the history of the Railway Labor Act, said at pages 332-3:

"In short, Congress by this legislation has freely employed the traditional instruments of mediation, conciliation and arbitration. Those instruments, in addition to the available economic weapons, remain unchanged in large areas of this railway labor field. On only certain phases of this controversial subject has Congress

> utilized administrative or judicial machinery and invoked the compulsions of the law. Congress was dealing with a subject highly charged with emotion. Its approach has not only been slow; it has been piecemeal. Congress has been highly selective in its use of legal machinery. The delicacy of these problems has made it hesitant to go too fast or too far. *The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate.*
>
> "That history has a special claim here. It must be kept in mind in analyzing a bill of complaint which, like the present one, seeks to state a cause of action under the Railway Labor Act and asks that judicial power be exerted in enforcement of an obligation which it is claimed Congress has created."

The language emphasized above, "The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate", expresses this Court's deliberate opinion that there should be no adjudication under the Act that the Act does not specifically authorize. *A fortiori* then, the Act should not be read as repealing by implication the Norris-LaGuardia Act.

It seems clear to us, as it was clear to the *court in the Central of Georgia* case, that even if Congress intended to prohibit strikes by the National Railway Labor Act, it is unthinkable that it intended to restore the remedy of injunction in repudiation of the Norris-LaGuardia Act, only two years after its passage, in the absence of the plainest of language to accomplish that result.

CASES RELIED UPON BY RESPONDENTS, THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND THE DISSENT IN THE *CENTRAL OF GEORGIA* CASE DISTINGUISHED.

It is significant that never once since the enactment of the National Railway Labor Act has this Court sustained an injunction *sought by a railway employer* to restrain a strike.

The following cases, cited by respondents, the Court of Appeals for the Seventh Circuit and the dissenting opinion in the *Central of Georgia* case, may thus be tersely distinguished:

1. *Virginian Ry. Co.* v. *System Federation* No. 40, 300 U. S. 515, 81 L. ed. 789, 57 S. Ct. 592, involved an injunction sought by it to compel a railway carrier to recognize and treat with their union, the only authorized bargaining representative, as is required by Section 2 of the Railway Labor Act. But, there it was the *carrier* who sought the *protection of the* Norris-LaGuardia Act, seeking to rely upon its Section 9 (109), which deals with the *scope* of injunctions. No *strike*, or any other act enumerated in Section 4 (104), *was even involved* in that case. The court merely held that the Norris-LaGuardia Act was not passed to shield the actions of a carrier which had violated the Railway Labor Act. Obviously, a railroad's duty to treat with an employees' bargaining representative (Railway Labor Act's Section 2), is not one of those acts exempt from injunction by the Norris-LaGuardia Act's Section 4 (104).

2. *Graham* v. *Brotherhood of Locomotive Firemen and Enginemen*, 338 U. S. 232, 94 L. ed. 22, 70 S. Ct. 14, dealt with an injunction issued in favor of *employees* against certain railroads and a union restraining compliance with a collective labor agreement which discriminated against colored firemen. Like the *Virginian Ry.* case, *supra*, no *strike* or

any other act exempted by Section 4 (104) of the Norris-LaGuardia Act was involved. So, this court held that

> "the Norris-LaGuardia Act (29 U. S. C. Secs. 101 *et seq.*) did not deprive Federal courts of jurisdiction to compel compliance with positive mandates of the Railway Labor Act (45 U. S. C. Secs. 151 *et seq.*) enacted for the benefit and protection, within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act".

While the Court held that the controversy there was a labor dispute, nevertheless it further said that the Railway Labor Act imposed upon the bargaining representative the duty to represent all without hostile discrimination. Accordingly, it said that the Norris-LaGuardia Act did not "contain anything to suggest that it would deprive these Negro firemen of recourse to equitable relief from illegal discriminatory representation by which there would be taken from them their seniority and ultimately their jobs." No strike, or any other act enumerated and protected against injunction by Section 4 (104) of the Norris-LaGuardia Act was even involved there.

3. *Texas and New Orleans Railroad Company* v. *Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548, 74 L. ed. 1034, 50 S. Ct. 427, involved an injunction by *employees* against a railway carrier to restrain the company's influence and coercion of them with reference to their organization and designation of their collective bargaining representative under the Railway Labor Act as it existed before the 1934 amendment. Such created a duty, which was judicially enforceable. Again no strike or any other act protected against injunction by Section 4 (104) of the Norris-LaGuardia Act, was involved.

Moreover the Norris-LaGuardia Act had not even been passed when this case was decided.

4. *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U. S. 768, 96 L. ed. 1293, 72 S. Ct. 1022, was another Negro discrimination decision in which, like *Graham, supra*, certain railway employees obtained an injunction against enforcement of a racially discriminatory agreement made by their carrier and bargaining representative, this court holding that such an agreement was void and unenforceable. In so deciding it held that the trial court had jurisdiction, regardless of the Norris-LaGuardia Act, citing the other racial discrimination cases of *Steele* (323 U. S. 192, 89 L. ed. 173, 65 S. Ct. 226), *and Graham, supra.* Nothing in the *Howard* case is supportive of petitioner's contention. Here again, in the *Howard* case, there was no strike or any other of the acts specified in Section 4 (104) of the Norris-LaGuardia Act.

None of the *Virginian Ry. Co., Graham Texas and N. O. Ry Co.*, and *Howard* cases involved either a (1) strike, or (2) any other activity insulated by Section 4 (104) of the Norris-LaGuardia Act or (3) the Adjustment Board. On the contrary, *all* of these cases involved injunctions granted (1) at the instance of *employees* against their railway carrier *employer* and (2) for protection of their rights as contemplated by the *Norris-LaGuardia* Act.

5. *Order of Railway Conductors* v. *Pitney*, 326 U. S. 561, 90 L. ed. 318, 66 S. Ct. 322, is next cited. There the Court *denied* an injunction. Furthermore, the case did not involve either (1) a strike or (2) any other activity embraced in Section 104, of the Norris-LaGuardia Act. Actually, it involved a dispute primarily *between two railway brotherhoods*, each claiming that its respective contract with the railway carrier entitled it to the work in question. The carrier was in reorganization, and filed in the *federal* court an *equitable* proceeding in the nature of a petition to instruct its trustee and for injunction. This case involved an interpretation of the labor contracts of two competing unions.

The court held that until those contracts had been construed by the National Railroad Adjustment Board, one could not tell whether the conductors were entitled to perform the work which they were asking to have enjoined from being to the competing union. We submit it is fallacious to argue that the denial of an injunction is proof of the court's power to grant one. The court stayed dismissal of the action as it involved a question of instructions to the court's trustee. The petitioner's argument that the court's purpose in granting the stay was to maintain the status quo is wholly misleading and incorrect.

6. *Elgin, Joliet and Erie Ry. Co.* v. *Burley*, 325 U. S. 711, 89 L. ed. 1886, 65 S. Ct. 1282, is important because it differentiates between "grievances" and "major disputes" *only* insofar as their administrative handling is concerned. It does *not* involve either (1) an injunction or (2) a strike or any other of the acts insulated by Section 104 of the Norris-LaGuardia Act. Like *Pitney*, it does not even mention that act. At the outset it referred to certain language in the *Moore* case (*Moore* v. *Illinois Central Ry. Co.*, 312 U. S. 630, 85 L. ed. 1089, 61 S. Ct. 754), to-wit, that the machinery provided for settling disputes was *not* "based on a philosophy of legal compulsion" but created "a system for peaceful adjustment and mediation voluntary in its nature," and its holding that resort to Adjustment Board may not be necessary in a case involving unlawful discharge. The court points out that another of the Railway Labor Act's "primary commands, judicially enforceable" is the duty to negotiate. But, nowhere in the *Burley* decisions can be found any support that a United States District Court may enjoin a strike, as contended here.

7. *Slocum* v. *Del., Lakawanna & Western Railroad Co.*, 399 U. S. 239, 94 L. ed. 795, 70 S. Ct. 577, is similar to the *Pitney* case, applying its doctrine to state courts. No in-

junction or other equitable relief was sought in the *Slocum* case. There was no strike. The Norris-LaGuardia Act was not even mentioned. What this Court said as to the "exclusiveness" of the jurisdiction of the National Railway Adjustment Board related solely to the exclusiveness of administrative, as opposed to judicial authority. The Court did not touch the question of settlement by voluntary means or the use of economic pressure.

8. *Order of Railway Conductors of America* v. *Southern Railway Company*, 339 U. S. 255, 94 L. ed. 811, 70 S. Ct. 585, was like the *Slocum* case in that the carrier had filed in the State court its petition for declaratory judgment to interpret a collective bargaining agreement. This court, at the outset, remarked that the case presented "the same statutory question as" the *Slocum* case, and held that "for reasons set out in the *Slocum* case . . ." the South Carolina State Court was without power to interpret the terms of this agreement and to adjudicate the dispute. Certainly, nothing in that case is supportive of petitioner's position for an injunction against a strike.

In the *Pitney*, *Slocum* and *Southern Ry.* cases the doctrine of exclusive administrative jurisdiction constituted a valid defense against the carriers' efforts to obtain judicial relief. In the case at bar the carrier seeks to invoke that doctrine as supportive of an injunction in its behalf. In fact, in the three cases mentioned no such use was made of the doctrine. In *Pitney* an injunction was *denied* because of the doctrine. It is apparent that the cases cited do not in any way justify the use which petitioner is attempting to make of that doctrine.

9. The last decision of this court relied upon by the Court of Appeals below is *Cook County National Bank* v. *United States*, 107 U. S. 445, 27 L. ed. 537, 2 S. Ct. 561. The opinion in very general terms, which the court used to ex-

press the repeal or supersession of the insolvency act of 1797 by the National Banking Law enacted some decades later. We do not quarrel with the principle there stated except to point out that repeals by implication are not favored.

The character of the banking laws and the character of the Railway Labor Act as repealing statutes by implication are not at all alike. Moreover the time element between the National Banking Laws and the Insolvency Laws of 1797 and the time of approximately two years between the Norris-LaGuardia Act and the Railway Labor Act are totally dissimilar. It is impossible to see why the reason for the repeal of the insolvency laws of 1797 by the banking act forms any grounds whatever for the repeal of the Norris-LaGuardia Act by the Railway Labor Act. As the language of this Court's opinion says,

> "The question is one respecting the intentions of the Legislature."

Conclusion on the Merits.

The considerations above developed demonstrate that Congress did not intend to forbid strikes by the enactment of the National Railway Labor Act.

The conclusion is even clearer that if Congress did intend to prohibit strikes by railway labor, it did not intend to repeal the Norris-LaGuardia Act so as to implement that prohibition by injunction.

This is true whether the disputes involved are "major" or "minor" and whether they have for their object the redress of alleged past grievances or the fulfilment of demands for future benefits.

IV.

THIS CASE IS OF SUFFICIENT IMPORTANCE TO ELICIT CERTIORARI.

Even if there were no conflict of judicial authority, the questions presented in this case are of sufficient moment to labor, management and the public to elicit *certiorari.*

But there is direct and irreconciliable judicial conflict.

The Court of Appeals for the Seventh Circuit has held that the National Railway Labor Act repeals, at least as to strikes over minor grievances, the Norris-LaGuardia Act.

The Court of Appeals for the Fifth Circuit has reached a contrary conclusion and has declared that it was not the intention of Congress to abridge *to any extent* the Norris-LaGuardia Act by the National Railway Labor Act.

It is significant to note that the District Courts in the instant and in the *Central of Georgia* cases were also in conflict.

The District Court in the instant case sustained the Contention of the Brotherhood of Railroad Trainmen. The District Court in the *Central of Georgia* case rejected the contention of that Brotherhood.

Each Court of Appeals reversed its respective District Court.

Even if none of the views expressed in the decisions of the courts below in this case and in the *Central of Georgia* case had the dignity of a judicial decision, the contrariety of opinion of experienced jurists would still testify to the presence of an important question that should be resolved by this Court.

PRAYER FOR CERTIORARI.

For the reasons urged in this petition, petitioners respectfully seek this Court's writ of *certiorari* to review and reverse the judgment of the Court of Appeals for the Seventh Circuit in this case.

Respectfully submitted,

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APPENDIX I.

THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY, et al.,

v

BROTHERHOOD OF RAILROAD TRAINMEN, Appellees, 229 F. 2d 926.

Before FINNEGAN, LINDLEY and SCHNACKENBERG, Circuit Judges.

SCHNACKENBERG, Circuit Judge.

By amended complaint the Chicago River and Indiana Railroad Company[1] and 27 other railroads prayed for an injunction to restrain the Brotherhood of Railroad Trainmen[2] from calling a threatened strike against the River Road. Trainmen's counsel state that the purpose of said strike is to settle 21 grievances and claims through collective bargaining rather than by an award of the National Railroad Adjustment Board.[3] The district court granted a restraining order which was later dissolved when the court decided that the Norris-LaGuardia act was applicable and, therefore, it lacked jurisdiction to grant the relief sought. It dismissed the cause. The court subsequently granted an injunction pending the determination of this appeal, which was taken from the judgment of dismissal.

The grievances of the employees involved are 19 claims for additional compensation, 1 claim for reinstatement to a higher position, and 1 claim for reinstatement to the employ of the River Road. Each of these claims was presented to the railroad superintendent who handles such cases. Each was appealed to the highest railroad officer designated to handle claims under § 3, First (i) of the Railway Labor Act, 45 U.S.C.A. § 153, First (i), and was denied by him.

The amended complaint charges that this strike would halt the operations of all trains into and out of the Chicago

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[1] Sometimes referred to herein as "River Road".

[2] Sometimes referred to herein as "Trainmen".

[3] Sometimes referred to herin as the "Board".

Stockyards, force the River Road to lay off 1,100 employees, who would lose in excess of $12,000 a day in wages, cost the company thousands of dollars a day, and require the embargo of all shipments into and out of the Stockyards, causing irreparable damage to the 27 railroads (the other plaintiffs) and the 600 industries served. The Trainmen's answer alleges that they do not have sufficient information to form a belief as to the truth or falsity of these charges and, therefore, they deny the same. The amended complaint was dismissed without the taking of evidence.

The amended complaint and the answer show that the River Road, on July 15, 1954, submitted to the Board the claims in dispute and the Board has not yet rendered a decision on any of them.

The first contested issue herein, as stated by the Trainmen, is: "Does the Railway Labor Act prohibit a union from striking over claims and grievances, matters which are within the jurisdiction of the National Railroad Adjustment Board?" Plaintiffs say that it is mandatory under the Railway Labor Act that minor disputes[4] be adjusted instead of being made the subject of a strike. They contend that such command must be enforced, even though the act itself does not provide enforcement machinery, and that an injunction is appropriate to this end. The Trainmen contend that the Railway Labor Act does not prohibit a union from striking over claims and grievances though such matters are within the jurisdiction of the Board. Their answer avers that the effect of the strike, if successful, would be settlement of said disputes through collective bargaining instead of by award of the Board.

1(a). The Railway Labor Act of 1926, as amended in 1934,[5] expressly states its purposes,[6] the first of which is "To avoid any interruption to commerce or to the operation of any carrier engaged therein;" and the fifth of which is "to provide for the prompt and orderly settlement of all disputes growing out of grievances * * *."

(1-3) The difference between disputes over grievances and disputes concerning the making of collective agreements

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[4] It is agreed that the claims and grievances which are the subject of the suit at bar are all so-called "minor disputes".

[5] 45 U.S.C.A. § 151 *et seq.*

[6] Ibid. § 151a.

is traditional in railway labor affairs. It has assumed large importance in the Railway Labor Act of 1934, substantively and procedurally. *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, at page 722, 65 S.Ct. 1282, at page 1289, 89 L.Ed. 1886. As to disputes over grievances, the act contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. Such a dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. So-called minor disputes, involving grievances, the 1934 act sets apart from major disputes and provides for them very different treatment. The court said, 325 U.S. 724, 65 S.Ct. 1290:

> "The Act treats the two types of dispute alike in requiring negotiation as the first step toward settlement and therefore in contemplating voluntary action for both at this stage, in the sense that agreement is sought and cannot be compelled. To induce agreement, however, the duty to negotiate is imposed for both grievances and major disputes.
>
> "Beyond the initial stages of negotiation and conference, however, the procedures diverge. 'Major disputes' go first to mediation under the auspices of the National Mediation Board; if that fails, then to acceptance or rejection of arbitration, cf. § 7; (*Brotherhood of Railroad Trainmen* v. *Toledo*, P. & W. R. Co., 321 U.S. 50, 64 S.Ct. 413, 88 L.Ed. 534; and finally to possible presidential intervention to secure adjustment. § 10. For their settlement the statutory scheme retains throughout the traditional voluntary processes of negotiation, mediation, voluntary arbitration, and conciliation. Every facility for bringing about agreement is provided and pressures for mobilizing public opinion are applied. The parties are required to submit to the successive procedures designed to induce agreement. § 5, First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. No authority is empowered to decide the dispute and no such power is intended, unless the parties themselves agree to arbitration.
>
> "The course prescribed for the settlement of grievances is very different beyond the initial stage. There-

after the Act does not leave the parties wholly free, at their own will, to agree or not to agree. On the contrary, one of the main purposes of the 1934 amendments was to provide a more effective process of settlement.

"Prior to 1934 the parties were free at all times to go to court to settle these disputes. * * * Several organizations took strike ballots and thus threatened to interrupt traffic, a factor which among others induced the Coordinator of Transportation to become the principal author and advocate of the amendments. The sponsor in the House insisted that Congress act upon them before adjournment for fear that if no action were taken a railroad crisis might take place. * * * the Adjustment Board was created and given power to decide them."

The court then said, 325 U.S. 727, 65S.Ct. 1291:

"The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board. Another tribunal of very different character is established with 'jurisdiction' to determine grievances and make awards concerning them. Each party to the dispute may submit it for decision, whether or not the other is willing, provided he has himself discharged the initial duty of negotiation. § 3, First (i). Rights of notice, hearing, and participation or representation are given. § 3, First (j). In some instances judicial review and enforcement of awards are expressly provided or are contemplated. § 3, First (p); cf. § 3, First (m). When this is not done, the Act purports to make the Board's decisions 'final and binding.' § 3, First (m)."

The procedure prior to 1934 was in fact and effect nothing more than one for voluntary arbitration. No dispute could be settled unless submitted by agreement of all parties. The Board was created to remove the settlement of grievances from this stagnating process and bring them within a general and inclusive plan of decision. The aim was not to dispense with agreement. It was to add decision where agreement fails and thus to safeguard the public as well as private interests against the harmful effects of the pre-existing scheme. *Elgin, J. & E. R. Co.* v. *Burley, supra,* 325 U.S. 727, 65 S.Ct. 1292.

At a hearing before a senate committee on the bill for the 1934 amendments, the Railroad Brotherhoods' representative, Mr. Harrison, stated:

> "'These *railway labor organizations have always opposed compulsory determination of their controversies.* We have lived a long time and got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and * * * *we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these* organizations are willing to make'". 325 U.S. 728, note 24, 65 S.Ct. 1292.

(4) As to major disputes, the act requires the parties to submit to the successive procedures designed to induce agreement. § 5, First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. That means, that as to disputes over the formation of collective agreements or efforts to secure or change them, the issue not being whether an existing agreement controls the controversy, the act recognizes the right of employees to strike, but postpones such action until the successive procedures set up by the act have been exhausted. No authority is empowered to decide this dispute, unless the parties agree to arbitration.

(5) On the other hand, as to minor disputes, such as those relating to grievances and claims, either party may submit a dispute to the Board for decision, *whether or not the other is willing,* provided he himself has discharged the initial duty of negotiation. Except in instances where judicial review and enforcement of awards are expressly provided for or contemplated by the act, § 3, First (p); cf. § 3, First (m), the Board's decisions are final and binding. We hold this to mean that a strike in regard to such minor disputes, or the Board's decisions thereon, would be illegal.

(b). Plaintiffs contend that, inasmuch as it is mandatory under the Railway Labor Act that grievances be adjusted on a submission by either party and that they cannot be the subject of a strike, such command must be enforced, even though the act itself does not provide enforcement machinery. The Trainmen deny this conclusion, "because no provision of the Railway Labor Act prohibits a strike over grievances * * *."

In speaking of the Railway Labor Act of 1926, in *Texas & N. O. R. Co.* v. *Brotherhood of Ry. & S. S. Clerks*, 281 U.S. 548, 50 S.Ct. 427, 74 L.Ed. 1034, the court was discussing an injunction granted by a district court restraining the railroad company from interfering with its clerical employees in the matter of their organization for the purposes set forth in that act. At page 569 of 281 U.S., at page 433 of 50 S.Ct., it said:

> "The creation of a legal right by language suitable to that end does not require for its effectiveness the imposition of statutory penalties. Many rights are enforced for which no statutory penalties are provided. * * * The right is created and the remedy exists."

The court affirmed the decree granting the injunction. To the same effect are *Virginian Ry. Co.* v. *System Federation*, 300 U.S. 515, 57 S. Ct. 592, 81 L.Ed. 789, *Steele* v. *Louisville & N. R. Co.*, 323 U.S. 192, at page 207, 65 S.Ct. 226, 89 L.Ed. 173, and *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U.S. 768, 72 S.Ct. 1022, 96 L.Ed. 1283.

(6) We, therefore, hold that the district court has jurisdiction to issue an injunction restraining the Trainmen from striking over grievances and claims, unless the Norris-LaGuardia act prevents or limits the court's power so to do.

(7) 2. The Trainmen say that the second contested issue herein is: "Did the Trial Court err in holding that the Norris-LaGuardia Act was applicable and that it therefore lacked jurisdiction to grant the relief sought by the plaintiffs?" Plaintiffs respond that the Norris-LaGuardia act does not prevent the federal courts from issuing injunctions to enforce compliance with the provisions of the Railway Labor Act. The Trainmen argue that the Norris-LaGuardia act has divested the trial court of jurisdiction to grant the injunction sought against the threatened strike. They take the position that "no restraining order or injunction can be issued enjoining any actual or threatened strike unless the terms and conditions of the Norris-LaGuardia Act are fully complied with. Defendants so contend that such is the law even assuming that the provisions of the Railway Labor Act, here involved, will be violated by the threatened strike."

In enacting the Norris-LaGuardia act in 1932[7] congress sought to correct many of the alleged abuses of the injunctive remedy which labor disputes had brought to national prominence during the quarter century preceding the act. In so doing congress purported to cover the general area comprehended by the term "labor dispute" irrespective of the parties involved or the possibilities of any special situation which might arise. The vital and unique position of the railroad industry in the economy of this country, coupled with experience acquired after the act's enactment, demonstrated in 1934 the need for special methods and techniques of handling labor disputes affecting railroads which were so distinctive as to require special treatment in the public interest.

(8) Accordingly, the 1934 amendments to the Railway Labor Act were enacted. They provided *inter alia* for compulsory and determinative adjustment of minor disputes. As we have already seen, the compulsory features of the Railway Labor Act are enforceable by injunctions issued by the federal district courts. We cannot presume that congress, in so amending the Railway Labor Act in 1934, intended that such an injunction could not issue unless compliance was first had with the act of 1932 dealing with the general subject of injunctions in labor disputes.

(9, 10) The Railway Labor Act, as amended in 1934, embodies a complete plan for avoiding any interruption to commerce or to the operation of any carrier engaged therein.[8] It is directed to the needs of the railroad industry, empolyers and employees alike, having in mind the paramount interest of the public. It does not call for the aid of, or submit to, the limitations of the Norris-LaGuardia act. Indeed, the provisions in regard to injunctions prohibiting strikes in labor disputes, as contained in the Norris-LaGuardia act, if controlling in a situation such as we have here, arising under the Railway Labor Act, would practically render the compulsory features of the latter act nugatory. We are unimpressed with the argument of Trainmen's counsel that damages suffered by the many persons who might be injured by such a strike could be compensated in private suits brought therfor. A right to relief by suit

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[7] 29 U.S.C.A. § 101 *et seq.*

[8] 45 U.S.C.A. § 151a.

for damages in such a situation would be an illusory remedy and a poor protection of the public interest. The effect of a strike against the railroads of the nation requires the expeditious intervention of a court to safeguard that interest. This can be accomplished only by the prompt employment of a court's equitable powers, primarily its injunctive power. The compulsion inherent in the Railway Labor Act requires prompt and effective use of judicial machinery and, there being no clear intention contained in that act to the effect that the Norris-LaGuardia act prohibits or limits the issuance of injunctions to implement the Railway Labor Act, we hold that the Norris-LaGuardia act does not apply to the case at bar.

(11) As was said in *Cook County National Bank* v. *United States*, 107 U.S. 445, 2 S.Ct. 561, at page 566, 27 L. Ed. 537, at page 539:

> "A law embracing an entire subject, dealing with it in all its phases, may thus withdraw the subject from the operation of a general law as effectually as though, as to such subject, the general law were in terms repealed. The question is one respecting the intention of the legislature."

When considering the effect of the 1934 amendment which added new provisions in § 2, Ninth, of the Railway Labor Act, in *Virginian Ry. Co.* v. *System Federation*, 300 U.S. 515, at page 545, 57 S.Ct. 592, at page 598, 81 L.Ed. 789, the court said:

> "Neither the purposes of the later act, as amended, nor its provisions when read, as they must be, in the light of our decision in the Railway Clerks case, *supra*, lend support to the contention that its enactments, which are mandatory in form and capable of enforcement by judicial process, were intended to be without legal sanction."

The court held that a decree for a mandatory injunction granted by a district court, for the purpose of enforcing the provisions of § 2, Ninth, of said act, was proper, saying, 300 U.S. at page 552, 57 S.Ct. at page 601:

> "More is involved than the settlement of a private controversy without appreciable consequences to the public. The peaceable settlement of labor controversies, especially where they may seriously impair the ability

> of an interstate rail carrier to perform its service to the public, is a matter of public concern. That is testified to by the history of the legislation now before us, the reports of committees of Congress having the proposed legislation in charge, and by our common knowledge. Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved."

In answer to the contention that the Norris-LaGuardia act controlled, the court said, 300 U.S. at page 563, 57 S.Ct. at page 607;

> "It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of section 2, Ninth, of the Railway Labor Act (45 U.S.C.A. § 152, subd. 9), authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act."

(12) Insofar as the Railway Labor Act, as we now interpret it, authorizes the issuance of injunctions to prevent strikes over minor disputes, it operates to *repeal* the provisions of the Norris-LaGuardia act, to the extent that the wording thereof might otherwise be said to apply to such railway labor disputes. It follows that, in the case at bar, the district court has jurisdiction to entertain plaintiffs' prayer for injunctive relief.

3. The correctness of the conclusions which we have reached in this case is supported by the legislative history of the Railway Labor Act.[9]

For the reasons herein set forth, the order from which an appeal has been taken is reversed and the cause is remanded to the district court with instructions to take further proceedings not inconsistent with the views herein expressed.

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[9] See: statement of Mr. Harrison, ante page 5 [930 p. of 229 F.2d]; Elgin, J. & E. R. Co. v. Burley, 325 U.S. 711, at pages 721-729. 65 S.Ct. 1282, 89 L.Ed. 1886; hearings before the Senate Committee on Interstate Commerce, 73d Cong., 2d Sess. (1934) on S. 3266; hearings before the House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. (1934) on H. R. 7650; Senate Report No. 1065 (73d Cong., 2d Sess.); House Report No. 1944 (73d Cong., 2d Sess.) and 78 Cong. Rec. 11710-11720, 12083, 12375.

APPENDIX II.

BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE NO. 721, et al., Appellants,

v.

CENTRAL OF GEORGIA RAILWAY COMPANY, Appellee. No. 15671.

Before HUTCHESON, Chief Judge, and BORAH and BROWN, Circuit Judges.

HUTCHESON, Chief Judge.

Brought by their employer in the midst of a labor dispute, against the named defendants and the class of employees represented by them, the suit was for: (1) a temporary injunction restraining them pendente lite, from endeavoring by self help to effect a modification or change of an arbitration award known as the Cheney Award and from calling and putting into effect a strike because of plaintiff's refusal to acquiesce in their demands; (2) a judgment declaring the award final and binding and not subject to modification and change; and (3) a final order making the injunction permanent.

The claim was: that, though in compliance with the decision of the Supreme Court of Georgia,[1] that it should do so, and pursuant to the Railway Labor Act, 45 U.S.C.A. § 151 *et seq.*, plaintiff had submitted the controversy between it and the defendants over the Cheney Award to the National Railroad Adjustment Board, the defendants had demanded that a modification of the award be negotiated and had given formal notice that a strike of the employees was being set subject to a satisfactory settlement; that the strike date was once postponed at the intervenion of the National Mediation Board, but the mediator had advised plaintiff that his services were fruitless; that the defendants will not agree to leave the matter in status quo pending a decision of the controversy by the National Adjustment Board, and have called a system wide strike against plaintiff to coerce it to adopt defendants' interpretation of the award; and that if

[1] Central of Georgia Ry. Co. v. Brotherhood of Railroad Trainmen, 211 Ga. 263, 85 S. E. 2d 413.

the strike becomes effective it will completely close down plaintiff's operations with resulting irreparable injury.

The defendants filed a motion to dismiss[2] for want of jurisdiction on the ground, among others, that the petition shows on its face that plaintiff is seeking an injunction in the face of, and contrary to, the Norris-LaGuardia Act, Secs. 101-115, Title 29.

This motion denied and a hearing had, the district judge concluding: that the Norris-LaGuardia Act was not intended by Congress to deprive a district court of jurisdiction to prevent irreparable injury by maintaining the status quo in respect to a controversy which is pending before the National Adjustment Board; and that it was necessary to preserve the status of the controversy now before the Board; granted the preliminary injunction as prayed, enjoining defendants from striking, work stoppage, picketing, or any similar device.

Appealing from the order denying its motion to dismiss, for want of jurisdiction, and the order granting the injunction appellants, presenting four questions[3] for our decision, thus summarize their principal argument for reversal;

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[2] "Now comes the Brotherhood of Railroad Trainmen, et al, defendants in the above entitled cause, and moves the court as follows:

"1. To dismiss the action because the petition fails to state a claim against the defendants upon which relief can be granted.

"2. To dismiss the action because the petition shows on its face that the Court is without jurisdiction of the subject matter.

"3. To dismiss the action on the grounds that the Court lacks jurisdiction because the petition shows that the plaintiff has not exhausted is administrative remedy.

"4. The petition shows upon its face that plainttiff is seeking an injunction under circumstances that are prohibited by the laws of the United States, to-wit, the Norris-LaGuardia Act, Title 29, Sections 101-115 and seeks no other relief."

[3] These are:

"First. Were all of the requirements of the Norris-LaGuardia Act met so as to authorize an injunction under the facts here involved?

"Second. Did the railway carrier first exhaust its administrative remedies available under the Railway Labor Act so as to authorize an injunction under the facts here involved:

"Third. Is a demand for a change in rates of pay, rules or working conditions, pursuant to the Railway Labor Act, Sec. 6, a justiciable issue and basis for an injunctiion under the facts here involved?

"Fourth. Did the arbitration award in question conclude and thus prevent negotiation of the demand given by the Brotherhood to the Carrier pursuant to the Railway Labor Act, for compensation for coupling so as to authorize an injunction under the facts here involved?"

"In both the overruling of the motion to dismiss the carrier's complaint and in issuing the temporary injunction against the Brotherhood defendants, the trial court violated the Norris-LaGuardia Act. These violations were numerous, repeated and substantial. Duty and candor compel us to say they were also flagrant. Any one of those violations controls and should alone decide the case. Therefore, we shall treat this feature first, before taking up the additional reasons for reversal."

"The policy of the Act as set forth in Section 102 prevades all of its provisions. It was passed primarily to protect labor, not management. By doing so, it was hoped that all industry, labor and management, would be benefited ultimately and thus that the Act would be in the public interest."

(1) We agree with the appellants that this is so. In the *Carter* case, *Carter* v. *Herrin Motor Freight Lines*, 5 Cir., 131 F. 2d 557, 560, where the suit was for an injunction, the court upheld the injunction as to those acts which dealt with such violations as trespassing, injuring property, intimidating, or threatening customers, molesting, assaulting, or intimidating employees, but reversed the injunction in respect of all matters which could be construed as prohibiting acts which the statute allows. Saying:

"The language of the act is too plain and the decisions construing it too clear cut and positive to admit of any doubt that the purpose and effect of the act, as a whole, was to give expression to, and make effective, the policy which breathes throughout it. This policy is that labor disputes, as such, with the assembling, the picketing, the persuasion, the stopping of work, the enlisting of sympathy and support, and all the other acts expressly enumerated in Sec. 104, were no longer to be the subject of injunctive action but were, and were expressly recognized to be, legitimate means for advancing the interests of the working man, and, therefore, of the people as a whole. In the light of that policy, which can be made fully effective only when there is a recognition on the part of employer and employee alike that labor disputes as such are not all reprobated but encouraged, and only violence in connection with them is forbidden . . ."

the court went on to hold that the use of injunctions in labor disputes, except for the limited purpose of preventing injury from violence where there was really no adequate remedy at law, was an abuse of legal process.

(2) In the face of the imperative language of the section,[1] appellee's contention, that the act is not applicable because what was sought to be enjoined was action in breach of a contract embodied in the Cheney Award, is wholly untenable. The same contention has been rejected in case after case holding that the statute requires a contrary ruling.

(3) Nor may appellee find better support for the injunction in its claim that the purpose of the strike and its effect would be to do violence to statutory procedures embodied in the statute for a disposition of controversies by the Railroad Adjustment Board. For, as has been held time and again, the purpose of the strike, whether it is or is not illegal, is not a limitation upon the prohibitions of the statute. *Cf. Wilson & Co.* v. *Birl*, 3 Cir., 105 F. 2d 948, and *East Texas Motor Freight Lines* v. *International Broth. of Teamsters*, 5 Cir., 163 F. 2d 10, where this court held that such a contention was an attempt to enlarge Federal Court jurisdiction as limited by the act. *Cf.* also *Milk Wagon Drivers' Union, etc.* v. *Lake Valley Farm Products*, 311 U. S. 91, 61 S. Ct. 122, 85 L. Ed. 63, and 43 C. J. S., Injunctions, § 147, p. 748 and 29 A. L. R. 2d 360.

(4) In this view it is not necessary for us to determine whether, as contended by appellees, the strike, if called, would be violative of the Railway Labor Act, upon the theory either that it would violate the contract providing for the Cheney Award, or that it would violate the spirit and purpose of the Labor Act to conduct a strike while the issue

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[1] "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts: (a) Ceasing or refusing to perform any work or to remain in any relation of employment;" (d) Aiding any persons involved in any labor dispute; (e) Giving publicity of any labor dispute; (f) Assembling to promote their interests; (g) Advising as to any of the acts heretofore specified; and (h) Agreeing with others to do or not to do any of the acts heretofore specified and (i) Causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Sec. 103. 29 U.S.C.A. § 104.

which brought it about was pending before the Adjustment Board with jurisdiction to decide it. This is so because the fundamental weakness of appellees' position is that there is no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of the LaGuardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the two acts either apart from or in connection with their legislative history.

It is true that the Railway Labor Act does contemplate that every reasonable effort will be made to maintain agreements and to avoid interruption to commerce, and that it contemplates that disputes be considered, and, if possible, decided expeditiously by negotiation and that if disputes over grievances are not adjusted on the property, they may be referred by both or either of the parties to the Adjustment Board. It is equally true, however, that none of the sections mandatorily provide that disputes must be submitted to the board rather than being handled by the voluntary methods provided for in the same act.

If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided. Indeed, in *General Committee of Adjustment, etc.* v. *Missouri-Kansas-Texas R. Co.*, 320 U. S. 323, 64 S. Ct. 146, 88 L. Ed. 76, the Supreme Court expressly held that the Mediation Board's determination of such a controversy was not justiciable. In the light of that decision, appellee is under a burden too heavy to be borne when it seeks to justify the judicial remedy sought and obtained here by invoking a jurisdiction which the Norris-LaGuardia Act expressly withdraws from the Federal Courts.

In short, all that is for decision on this appeal is whether the Railway Labor Act has expressly or impliedly repealed the provisions of the LaGuardia Act, denying jurisdiction to courts to enjoin strikes or work stoppages. Unless, therefore, it can be found that there has been such repeal, it is wholly unnecessary to determine whether, as appellee claims, the adjustment board has jurisdiction over the dispute or, as appellants claim, it does not have. Equally im-

material is the question whether the issue before the Adjustment Board is the same as that involved in the present case.

(5) Further, appellee's contention, which prevailed with the district judge below and which it presses here, that the suit falls within the language of the LaGuardia Act making an exception to the grant of an injunction in situations where unlawful acts have been threatened and will be committed unless restrained, is wholly untenable. It is plain from the language and the context that the words "unlawful acts" mean violence, breaches of the peace, criminal acts, etc., and that such terms do not include, they do not constitute a general reference to, anything that may be considered illegal but apply specifically to the acts of violence which authority is calculated to control. *Wilson & Co.* v. *Birl* and *Carter* v. *Herrin Motor Freight Lines, supra. Cf.* 43 C. J. S., Injunctions, § 138, p. 702 and cases cited.

The complaint did not allege that any such violence was threatened or feared, indeed it was carefully framed with the purpose and intent, if possible, to plead a case not within but without the Norris-LaGuardia Act. The statement of the district judge in Finding 33, with reference to the degree of damage depending on the destruction and violence of the strike, and in Finding 34, with reference to the carrier's being threatened with unlawful acts by the defendants which would result in damage to its property, did not constitute findings that physical violence had been threatened and would be committed, and, if they were intended to be such, they are without any support either in the pleadings or in the evidence. Neither was there allegation or supporting proof that police officers were unable or unwilling to furnish adequate protection.

In view of these conclusions, it is unnecessary for us to consider the points made by appellants that the carrier's own conduct in failing (1) to sincerely negotiate, (2) to apply for mediation, and (3) after mediation had begun to proceed with it, and (4) to exhaust its remedies before the Adjustment Board before resorting to suit, was such as to preclude it, under Section 108 of the Act, from seeking an injunction.

Finally, because of our expressed views that this case is one arising under the Norris-LaGuardia Act and the dis-

trict court was without jurisdiction to proceed in it, we do not reach the last question dealt with in appellants' brief, whether the fault in respect of the Cheney Award was the carrier's rather than the employees'.

(6) Appellee concedes that the basic and principal question on this appeal is whether or not the Norris-LaGuardia Act prohibits the district court in this case from taking jurisdiction and granting the pendente lite relief prayed. Conceding, too, that this is a case of first impression in any United States Court of Appeals, it urges upon us that the nature of the relief asked differentiates this case from all others and takes it out of the provisions of the Norris-LaGuardia Act, limiting the jurisdiction of the district court and directing its exercise. In emphasis of this argument, the appellee insists that it did not seek to have the dispute in question settled by the district court, that it sought merely to maintain the status quo pending the decision of the question by the Adjustment Board.

Assuming that this is a correct statement of its pleadings, and treating its argument as directed to the fact that the injunctive action granted was limited, we think it plain that this makes no difference. The decisive, the fundamental questions here are, was this a labor dispute and did the suit seek to prevent by injunction what the act denies the court the power to prevent, and the answers to the questions must be in the affirmative.

The judgment is, therefore, reversed, and the cause is remanded with directions to dismiss the suit for want of jurisdiction.

BROWN, Circuit Judge (dissenting).

The Railroad, by complaint,[1] sought and the court granted

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[1] The majority opinion states that the suit was for "(2) a judgment declaring the award final and binding and not subject to modification and change: * * *." With deference I do not so construe the record. In paragraph 30 of the complaint, the injunction sought is carefully restricted to "pending a determination of this controversy by the National Railroad Adjustment Board" and in the Prayer, that an injuction be issued restraining Brotherhood from "endeavoring to negotiate or * * * demanding a rule * * * prescribing extra compensation * * * for coupling and uncoupling air, steam or signal hose; * * * from calling a strike, work stoppage * * * directly or indirectly * * * because of * * * any feature of the controversy * * * described which has been referred to the National Railroad Adjustment Board * * * from en-

an injunction [2] against the threatened, imminent strike by the Brotherhood pending the determination by the Railway Adjustment Board of the question submitted to it by the Railway of whether the Cheney Award decided "once and for all" the question of whose duty was the job of coupling and uncoupling steam and air hose, as claimed by the Railroad, or, as claimed by Brotherhood, was temporary in nature and open for negotiation.[3] No declaratory relief or interpretation of the Cheney Award was sought or obtained.

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deavoring to negotiate a cancellation, change, modification or revision of the Award of Referee George Cheney * * *, until the consideration of this controversy by the machinery of the National Railroad Adjustment Board has been exhausted in accordance with the provisions of the Railway Labor Act * * *." The Brotherhood's brief before us described the complaint and Prayer, (page 2). "It prayed for temporary restraining order, temporary injunction, and permanent injunction, enjoining a threatened strike because of attempts by the Brotherhood to re-negotiate for pay for coupling."

[2] The Decree carefully recites the purpose to be: "in order to preserve the status quo of the controvery now before the National Railroad Adjusfment Board, * * *:

"Pending further order * * * and * * * a final hearing * * * the [Brotherhood] and others * * * are * * * enjoined * * * from threatening to or from calling a strike, work stoppage, or picketing * * * or from using any similar device * * * against the * * * Railway Company, and from striking, stoppage of work, picketing * * * in an effort to or designed or intended:

"A. To compel [Railroad] to agree with [Brotherhood] to a cancellation, modification, change or revision of the * * * Cheney [Award] * * *: or

"B. To compel the [Railroad] to agree to or to consummate a rule * * * inconsistent with the Cheney Award * * *; or

"C. To compel [Railroad] to agree to or to consummate a contract * * * prescribing extra compensation * * * for uncoupling air, steam * * * hose * * * inconsistent with the * * * Cheney Award.

* * * * *

"This order is not to be construed as effecting any action of the [Brotherhood] in any particular, except as actions may involve the controversy now before the National Railroad Adjustment Board; and is also not to be construed as inhibiting a voluntary settlement of this dispute."

[3] The Cheney Award, seeking to resolve the provocative controversy raging since 1887 with the advent of the Westinghouse Air Brake, grew out of the impasse in the 1950 Railway-Brotherhood negotiations with its threat of a nation-wide strike of all Class I Railroads with the devastating consequences to the nation's economy and security. The Mediation Board, under the Railway Labor Act, attempted unsuccessfully to produce agreement or persuade the parties to arbitrate. Under the Act, the President of the United States appointed an Emergency Board whose findings the Brotherhoods declined to accept, requesting instead that

At the outset, I am in complete agreement that, if the Norris-LaGuardia Act, 29 U. S. C. A. §§ 101-115, applies, the Railroad has not met its terms and the injunction, even though limited, ought not to have been granted. Similarly, I concur that the mere fact that the strike involved some violation of law or is in breach of contract does not remove the controversy from the sweeping prohibition of that Act. *Wilson & Co.* v. *Birl*, 3 Cir., 105 F. 2d 948; *East Texas Motor Freight Lines* v. *International Broth. of Teamsters*, 5 Cir., 163 F. 2d 10; *Carter* v. *Herrin Motor Freight Lines*, 5 Cir., 131 F. 2d 557; *Milk Wagon Drivers' Union, etc.* v. *Lake Valley Farm Products*, 311 U. S. 91, 61 S. Ct. 122, 85 L. Ed. 63.

But here injunction was sought and granted not because the contract forbade a strike, or to negotiate with the pressure of threatened strike was a violation of the contract, but rather because the contention and countercontention of the effect and significance of the contract (Cheney Award) was itself a "dispute[s] between an employee or group of employees and a carrier * * * growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * *", 45

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the President take control of the Railroads. In December 1950, after extended Presidentially sponsored conferences, agreement was reached on all but a limited number of issues, then specified, including coupling of steam-air hoses. On May 25, 1951, all issues, except two were settled, one being coupling air hoses, and on that date the parties agreed to submit the issues to a Presidentially appointed Referee, (George Cheney was named) "the decision of the Referee shall be final and binding on the parties, and shall become effective * * *."

On November 28, 1953, the Brotherhood, under 45 U.S.C.A. § 156 made demand for contract changes, including pay increases for air-steam coupling. Threatened with strike over the issue and mediation failing, the Railroad filed in the Georgia State Court a suit for declaratory judgment under the Cheney Award declaring it final and binding and seeking injunction to effectuate it. The Railroad asserted below that Brotherhood contended, and the Supreme Court of Georgia agreed, that the State "Court is without jurisdiction * * * and * * * the matters involved are within the jurisdiction of the National Railroad Adjustment Board exclusively under Title 45, § 153 [First] (i) * * *." Central of Georgia Ry. Co. v. Brotherhood of Railroad Trainmen, 211 Ga. 263, 85 S.E. 2d 413, 414. Immediately, the Railroad submitted the controversy to the Railroad Adjustment Board, Then followed, in January and February 1955, the renewed demands for negotiation by the Brotherhood, the strike notices, efforts at mediation and submission to arbitration. The Railroad claimed, and the trial court found, that the Brotherhood was unwilling to allow the question of the extent, nature and effectiveness of the Cheney Award to be decided by the Railroad Adjustment Board and, a system-wide strike being imminent, an injunction was issued to permit it to be determined by the Adjustment Board.

U. S. C. A. § 153, First (i), the determination of which is committed exclusively, where voluntary negotiations fail as they did here, to the National Railroad Adjustment Board. And if the controversy was one for the Railroad Adjustment Board, then the refusal of the Brotherhood, and its members, to allow the statutory course to be followed, and its interference in that process by a system-wide strike designed to force the issue on the very controversy before that tribunal, became, not a mere violation of a general law (unavailable as an escape from Norris-LaGuardia), but an absolute violation of the very law designed to regulate and control labor controversies of the kind involved.

Ignoring this latter point with an undue preoccupation with artificial concepts of partial repeal or implied repeal of Norris-LaGuardia is, I think, the defect of the majority opinion. The question is not; which repeals the other, and to what extent? It is rather the problem of frequent necessity in adjudication where two or more statutes, each bespeaking its own major policy, are accommodated and adapted to assure that the total policy reflected by all is effectuated.

This approach, substantiated by abundant authorities, has special merit here. Both statutes are the offspring of a common era, enacted (1932 and 1934) near the same time, with each intended as a major, deliberate and far-reaching change in national labor policy. Neither was intended as the repeal of the other. The enactment of one was not the repudiation of the policy of the other. They exist side by side and where, through the years, they have come into apparent collision, the courts, unfettered by awkward concepts of repeal, have found the way by which now one, now the other, has been found dominant and controlling.

In this light, Federal Courts have never been shackled by Norris-LaGuardia in giving life and force to the mandates of the Railway Labor Act. *Virginian R. Co.* v. *System Federation;*[4] *Graham* v. *Brotherhood of Locomotive Fire-*

[4] 300 U.S. 515, 57 S.Ct. 592, 607, 81 L.Ed. 789; injunction issued to require Railroad to bargain with Union certified by Mediation Board and not to bargain with another; notwithstanding that this controversy met many of the Norris-LaGuardia definitions of a "labor dispute" and the decree issued was of a type forbidden by Section 104, the Supreme Court rejected it as a bar: "It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found

men and Enginemen.[5]

Of course, the Railway Labor Act is not a voluntary, free-will mechanism; it is one imposing substantial obligations on the parties, railway management and labor alike; and a court, by injunction, can compel the parties to carry out and effectuate its aims, *Texas and N. O. R. Co.* v. *Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548, 50 S. Ct. 427, 74 L. Ed. 1034; *Virginian R. Co.* v. *System Federation, supra; Order of Ry. Conductors of America* v. *Pitney;*[6] *Elgin, Jol-*

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not to conflict with those of section 2, Ninth, of the Railway Labor Act (45 U.S.C.A. § 152, subd. 9), authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris LaGuardia Act." Of course, Section 2, Ninth, 45 U.S.C.A. § 152, Ninth, does not, as such, authorize injunctions.

[5] 338 U.S. 232, 240, 70 S.Ct. 14, 17, 94 L.Ed. 22; injunction affirmed against a union forbiddnig unlawful discrimination toward non-members. "The respondent [Brotherhood] has strenuously urged throughout that in view of the provisions of the Norris-LaGuardia Act * * * the District Court was without jurisdiction to grant relief by injunction. * * * But this is not a question of first impression. In Virginian R. Co. v. System Federation, 300 U.S. 515, 57 S.Ct. 592, 81 L.Ed. 789, we held that the Norris-LaGuardia Act did not deprive federal courts of jurisdiction to compel compliance with positive mandates of the Railway Labor Act, 45 U.S.C.A. § 151 et seq., * * * enacted for the benefit and protection within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act. * * * We adhere to the views expressed in the Virginian case. But the Brotherhood urges that the controversy in the Virginian case did not involve a labor dispute within the meaning of the Norris-LaGuardia Act and that accordingly that case must be distinguished on its facts. * * * We do not accept the Brotherhood's invitation to narrow the meaning of that term. * * * Moreover, if this Court had considered that a labor dispute was not involved, it would hardly have taken the trouble, in the Virginian case, to refute contentions based upon parts of the Act, which as a whole extends its protection solely to such disputes. * * * If, in spite of the Virginian, Steele [Steele v. Louisville & Nashville R. Co., 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173], and Tunstall [Tunstall v. Brotherhood of Locomotives, etc., 323 U.S. 210, 65 S.Ct. 235, 89 L.Ed. 187] cases * * *, there remains any illusion that under the Norris-LaGuardia Act the federal courts are powerless to enforce these rights, we dispel it now. * * *"

This completely dissipates, I think, the force of the argument of the majority: "If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivalbe, we hink, that it would not have expressly so provided. * * *." Of course, its emphasis on the prohibition of *strikes*, as such, ignores, as Justice Jackson pointed out, the wide character of controversies protected and remedies forbidden.

[6] 326 U.S. 561, 66 S.Ct. 322, 325, 90 L.Ed. 318; dispute over assignment of work on certain trains; one union contending that by virtue of a con-

iet & E. Ry. Co. v. *Burley;*[7] *Brotherhood of R. R. Trainmen* v. *Howard,*[8] including the resolution of disputes, grievances, and controversies through the administrative machinery of the Adjustment Board set up under the Act.[9]

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tract, not negotiated pursuant to Section 6, 45 U.S.C.A. § 156, it was unlawfully given to another. Court recognizes that injunction can issue to compel compliance with the Act, including Section 6, but since question depends on the interpretation of the disputed contract, this was a matter for determination by the Adjustment Board. "Under these circumstances the court should exercise equitable discretion to give that agency the first opportunity to pass on the issue. Certainly the extraordinary relief of an injunction should be withheld, at least, until then. * * * Only after the Adjustment Board acts, but not until then, can it plainly appear that such relief is necessary to insure compliance with the statute. * * *"

[7] 325 U.S. 711, 720, 721, 65 S.Ct. 1282, 1288, 89 L.Ed. 1886, 1893; the court rejects the contention that an Adjustment Board award amounts to nothing more than an advisory opinion. "The contention, founded upon language of the opinion in Moore v. Illinois Central R. Co., 312 U.S. 630, 61 S.Ct. 754, 85 L.Ed. 1089, regards the Act's entire scheme for the settlement of grievances as wholly conciliatory in character, involving no element of legal effectiveness, with the consequence that the parties are entirely free to accept or ignore the Board's decision.

"At the outset we put aside this broadest contention, as inconsistent with the Act's terms, purposes and legislative history. The Moore case involved no question concerning the validity or the legal effectiveness of an award when rendered. Nor did it purport to determine that the Act creates no legal obligations through an award or otherwise. * * * both prior and later decisions here are wholly inconsistent with such a view of its effects. * * * 12 * * *." Footnote 12 then states: "Thus, one of the statute's primary commands, judicially enforceable, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement. * * * [Citing cases.] This duty is not merely perfunctory. Good faith exhaustion of the possibility of agreement is required to fulfill it. * * * Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. R., 321 U.S. 50, 56, 64 S.Ct. 413, 416, 88 L.Ed. 534 [538] * * *. At successive stages of the statutory procedure other duties are imposed. Cf. §§ 5, First (b), 6, 10."

[8] 343 U.S. 768, 72 S.Ct. 1022, 1026, 96 L.Ed. 1283; "In fashioning its decree the District Court is left free to consider what provisions are necessary to afford these employees full protection from future discriminatory practices of the Brotherhood. However, in drawing its decree, the District Court must bear in mind that disputed questions of reclassification of the craft of 'train porters' are committed by the Railway Labor Act to the National Mediation Board."

[9] Rolfes v. Dwellingham, 8 Cir., 198 F.2d 591, 593: injunction issued in case involving allocation of work between competing classification of employees, to remain in force pending determination by the National Railway Adjustment Board of the question of jurisdiction involved or for a reasonable time for the waiters to invoke the jurisdiction of the Board. Equitable relief was granted " 'in aid of the administrative machinery provided for the adjustment of disputes in the Railway Labor Act' ", * * * and "limited its injunction strictly to the purpose of

The national Railway Labor Act is not for labor alone. To be sure it benefits labor greatly, but its underlying purpose is to assure industrial peace in an important phase of our national economy. It is a double-track system; the trains run both ways simultaneously, and when equity can compel a Railroad to comply, *Texas & N. O. R. Co.* v. *Brotherhood of Ry. & S. S. Clerks; Virginian R. Co.* v. *System Federation, supra,* so, too, may it compel obedience by unions, *Brotherhood of R. R. Trainmen* v. *Howard; Graham* v. *Brotherhood of Locomotive Firemen and Enginemen, supra.*

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affording opportunity for the administrative Board to function as contemplated by the Act. * * * The Railway Labor Act contemplates that the Boards which it sets up shall function through process of mediation and interpretation of disputed contracts to minimize conflicts and interruptions of commerce. * * * When the action was found to be wrongful and violative of the provisions of the Act, it was the duty of the court, and it properly acted, to restore the plaintiffs to their position before the wrongful action was taken against them." Court expressly states that Graham, Virginian, Steele, and Tunstall are "equally conclusive that the Norris-LaGuardia Act does not deprive the federal courts of power to issue such an injunction * * * in aid of the administrative Board and to preserve the right of the waiters-in-charge to resort to the administrative procedure provided by * * * the * * * Act."

Missouri-Kansas-Texas R. Co. v. Brotherhood of Railway & S. S. Clerks, 7 Cir., 188 F.2d 302: institution of suits by the Brotherhood to enforce awards on allocation of work between competing classifications enjoined, as awards illegal for want of notice.

Missouri-Kansas-Texas R. Co. v. National Railroad Adjustment Board, D.C. N.D. Ill., 128 F.Supp. 331: injunction issued against Brotherhood and Board to forbid efforts to enforce conflicting, contradictory awards made without adequate notice pending a determination of all of the cases consolidated by further award of the Board.

Brotherhood of R. R. Trainmen v. Templeton, 8 Cir., 181 F.2d 527, certiorari denied 340 U.S. 823, 71 S.Ct. 57, 95 L.Ed. 605, 643: injunction issued against Brotherhood to forbid enforcement of and practices under awards made without adequate notice on allocation of work between competing classifications.

Railway Employees' Cooperative Association v. Atlanta, B. & C. R. Co., D.C. Ga., 22 F.Supp. 510: injunction issued against Railroad prohibiting interference with union selection of bargaining representative pending decision by Railway Labor Board machinery.

Cf. Baltimore & O. R. Co. v. Chicago River & I. R. Co., 7 Cir., 170 F.2d 654, certiorari denied Brotherhood of R. Trainmen v. Baltimore & O. R. Co., 336 U.S. 944, 69 S.Ct. 811, 93 L.Ed. 1101; Missouri-Kansas-Texas R. Co. v. Randolph, 8 Cir., 164 F.2d 4.

Union Premier Food Stores v. Retail Food C. & M. Union, 3 Cir., 98 F.2d 821, reversed as moot 308 U.S. 526, 60 S.Ct. 376, 84 L.Ed. 445, presented substantially the same problem under the National Labor Relations Act; injunction was issued against a strike where, in a representation controversy, the employer was neutral and the matter was then awaiting decision by the National Labor Relations Board.

It seems equally plain that a genuine difference over the meaning and effect of a contract is a grievance which must be submitted to and decided by the Railway Adjustment Board, *Slocum* v. *Delaware, L. & W. R. Co.*;[10] *Order of Ry. Conductors of America* v. *Southern Ry. Co.*, 339 U. S. 255, 70 S. Ct. 585, 94 L. Ed. 811, once that procedure has been invoked by one of the parties.[11]

The legislative scheme for these matters to be first determined by the expertise of the Adjustment Board is completely frustrated if resort by either party to court or any other activity which prevents the free functioning of this machiney is permitted. Requiring the submission of these grievances to the Adjustment Board contemplates the exercise of deliberative judgment in the light of its special industrial experience.

No matter how informal the proceedings might be, or how strange to lawyers and judges the mechanism may function, the whole spirit is that the result is to be an informed judgment. That means that the adjustment machinery must be free to consider the controversy in the light of its inherent merits, free from extrinsic pressures. This deliberation, this exercise of judgment, cannot take place if either of the parties can marshal and deploy pressures and forces, economic or otherwise, which will interfere with or interrupt or,

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[10] 339 U.S 239, 70 S.Ct. 577, 579, 94 L.Ed. 795; referring to the Act's purpose to avoid interruption to Commerce, 45 U.S.C.A. § 151a, Court stated: "* * * This purpose extends both to disputes concerning the making of collective agreements and to grievances arising under existing agreements. [Cites Elgin case, supra.] The plan of the Act is to provide administrative methods for settling disputes before they reach acute stages that might be provocative of strikes. Carriers are therefore required to negotiate with bargaining representatives of the employees. [Cites Virginian, supra.] The Act also sets up machinery for conciliation, mediation, arbitration and adjustment of disputes, to be invoked if negotiations fail. * * * It was to prevent such friction that the 1926 Act provided for creation of various Adjustment Boards by voluntary agreements between carriers and workers. * * * But this voluntary machinery proved unsatisfactory, and in 1934 Congress, with the support of both unions and railroads, passed an amendment which directly created a national Adjustment Board * * *. The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. * * *"

[11] Elgin, Joliet & E. Ry. Co. v. Burley, 325 U.S. 711, 727, 65 S.Ct. 1282, 1292, 89 L.Ed. 1886, 1896. "Each party to the dispute may submit it for decision, whether or not the other is willing * * *."

more likely make altogether unnecessary or futile the operation of this machine.

A strike, or the threat of a strike, is but one kind of interference with the orderly operation of this mandatory system. If, merely because the union might ultimately strike after a final award by Adjustment Board or decision of Mediation Board, a strike, or threat of strike, can be used initially to thwart consideration or determination it would make the whole procedure futile. Surely, in the establishment of this system, Congress expected that machinery constructed for the purpose of eliminating strikes should have adequate means to control or regulate the force or threat of such action until the statutory device should have had an opportunity to function.

This does not impinge upon the basic policies reflected in the Norris-LaGuardia Act or the elemental rights which seem to inhere in the right to strike. A court of equity is not being used, as was so often formerly the case, to upset the balance or imbalance of competing economic forces in order to give one party, rather than the other, weight or advantage in a private controversy between labor and management. Here a court of equity exerts its power to fulfill the ppredominant public interest in having provocative (but as here otherwise relatively insignificant) controversies determined by the public agency established by law for that very purpose. In this way the equity court, not ranging on the side of one against the other, adheres strictly to the position of impartial enforcement of law—an imposition on each and both of the duty to use freely, and in good faith exhaust, this statutory machinery for the determination of these controversies.

A real, genuine, spirited disagreement exists as to the meaning, application and effect of the Cheney Award—whether, as claimed by Railroad, it solved the air coupling problem forever, or, as contended by Brotherhood, foreclosed it only during the life of the 1950 contract of which the Cheney arbitration was a part, and, whether, in either case, it would prohibit efforts by the Brotherhood to secure changes in contracts concerning the future. If the Railroad is right, the Brotherhood should be held to the bargain made inducing the Cheney arbitration and award; if the

Railroad is wrong, the Brotherhood should be free to negotiate with all the pressures and forces it can marshal.

That controversy is for determination by the machinery of the national Railway Labor Act. The decree permits the machine to work. It was right, in my judgment.

I therefore respectfully dissent.

APPENDIX III.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INJUNCTION.

This cause coming on to be heard, and the Court having considered the verified Amended Complaint heretofore filed in this case, the defendants' answer and motion to dismiss, and the plaintiffs' motions with affidavits attached, does find the facts and conclusions as to the law as follows:

Findings of Fact.

1. Plaintiffs are corporations organized and existing under and by virtue of the laws of various of the States of the United States. Plaintiffs are common carriers by railroad and are subject to the Railway Labor Act, 45 U. S. C. § 151 *et seq.* Plaintiff, The Chicago River and Indiana Railroad Company (hereinafter called the "River Road") is a corporation organized and existing under and by virtue of the laws of the State of Illinois and is a common carrier by rail and operates a line of railroad serving the Union stockyards, Chicago, Illinois, and serves at Chicago, Illinois the lines of railroad of the other plaintiffs.

2. The defendant Brotherhood of Railroad Trainmen is a voluntary organization and is a labor organization within the meaning of the Railway Labor Act, which is, and at all times material hereto has been the recognized and acting collective bargaining agent for all of the River Road's employees who are classified as yard foremen and yard helpers (including switch tenders). The Brotherhood of Railroad Trainmen consists of a Grand Lodge and many subordinate Local Lodges, and has its principal business office in Cleveland, Ohio.

3. The defendant Brotherhood of Railroad Trainmen, Lodge No. 964, is a local lodge of the Brotherhood of Railroad Trainmen with headquarters at Chicago, Illinois.

4. Defendants, Felix E. Kazmer, Michael V. Smalley, and George C. Hofer are officers of Lodge No. 964, and defendant W. M. Dolan is vice president of the Brotherhood of Railroad Trainmen. They fairly and adequately represent their organizations and the members thereof.

5. In the conduct of its business the River Road employs a class of employees, among others, generally referred to as yard foremen and yard helpers (including switch tenders) whose duties, generally stated, are the handling and controlling of the movement of railroad cars and trains over the rails of plaintiff. Plaintiff cannot operate its railroad without the performance of these duties. These employees are all members of or represented by the Brotherhood of Railroad Trainmen and Lodge No. 964, and the River Road has recognized the Brotherhood of Railroad Trainmen as the collective bargaining agent for these said employees.

6. For many years prior to the claims and grievances hereinafter referred to and continuing up to the present time, rules and working conditions pertaining to the classes of employees known as yard foremen and yard helpers (including switch tenders) were determined by contracts between plaintiff and the Brotherhood of Railroad Trainmen entered into from time to time.

7. The River R ad and the defendants have at all material times in question, and for many years prior thereto handled claims and grievances concerning individual employees of the classes mentioned in accordance with the various agreements and in accordance with the provisions of the Railway Labor Act. Among the claims and grievances presented to this plaintiff for disposition were nineteen claims for additional compensation, one claim for reinstatement of a discharged employee, and one claim for reinstatement of an employee to the position of yard foreman. These grievances, disputes and claims were handled on the property of this plaintiff in accordance with the various agreements between plaintiff and defendants, and in accordance with the provisions of the Railway Labor Act. All twenty-one claims above referred to were submitted to

the superintendent of the River Road, an officer designated to handle such cases, who considered and ultimately denied each of the twenty-one claims. Each of the said twenty-one claims was appealed to the General Manager of the River Road, who was designated as the highest officer to handle such claims under the Railway Labor Act. The said twenty-one claims were heard and considered at various times and were denied by the said officer on various dates between December 20, 1949 and September 4, 1953.

8. Defendants heretofore called a strike for six A. M. Monday, June 7, 1954, in order to coerce the River Road into meeting the demands contained in the said twenty-one grievances and claims. The said strike was postponed when the National Mediation Board proffered its services. The efforts of the National Mediation Board to mediate these disputes failed, whereupon the National Mediation Board withdrew on July 15, 1954. In the meantime the River Road submitted, pursuant to the terms of the Railway Labor Act, each of the said claims to the First Division of the National Railroad Adjustment Board, which has not yet rendered a decision on any of them.

9. The defendants, and each of them, have threatened an immediate strike of all employees of the classes of yard foremen and yard helpers (including switch tenders).

10. The said strike threat, if carried into effect, would paralyze the River Road's operation and prevent the transportation of persons and property over it. The purpose of said strike is to force this plaintiff, by the use of self-help by defendants and the employees represented by them, to settle grievances or claims for compensation without submitting such disputes or grievances to the National Railroad Adjustment Board.

11. Uninterrupted services of the River Road's yard foremen and yard helpers are essential to the operation of its railroad. A stoppage of operations would cause this plaintiff thousands of dollars damages daily and would require it to lay off approximately 1100 employees who would lose an aggregate amount of money in excess of Twelve Thousand Dollars ($12,000) wages daily for each day of such strike or stoppage. This plaintiff will be compelled to embargo shipments, including perishable foodstuffs, into and out of the stock yards in Chicago, which will immedi-

ately cause irreparable damage to the 600 industries and 27 railroads served by it. These 27 railroads, which are the other plaintiffs herein, will incur thousands of dollars of damages for each day the strike is in effect. The adverse effects upon business and the public generally will cause hundreds of thousands of dollars damage each day the strike is in effect.

12. The River Road has attempted to settle with defendants the 21 grievances and claims which underlie the threatened strike or work stoppage through negotiation and through the mediation efforts of the National Mediation Board. Defendants refused to submit the grievances to the National Railroad Adjustment Board and refused to join with the carrier in its submission.

13. The amount in controversy exceeds the sum of Three Thousand Dollars ($3,000), exclusive of interest and costs.

Conclusions of Law.

Under the foregoing findings of fact, the Court concludes that:

1. The cause of action here asserted by plaintiffs is one arising under the laws of the United States regulating commerce; and the Court has jurisdiction of the parties and subject matter of said cause under 28 U. S. C. 1331 and 1337.

2. The Complaint herewith states a claim upon which relief should be granted.

3. Plaintiffs, defendants and plaintiffs' employees represented by defendants are subject to the Railway Labor Act, the general purposes of which are, among other things, to avoid any interruption to commerce or to the operation of any carrier engaged therein; and to provide for the prompt and ordinary settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions.

Congress has established compulsory administrative machinery under the Railway Labor Act whereby parties to a collective bargaining agreement are required to submit such controversies as are here involved to the National

Railroad Adjustment Board or to a proper court or board without resorting to self-help.

4. It is the public policy of the United States stated in Section 2, First, of the Railway Labor Act, that it shall be the duty of all carriers, their officers, agents and employees, to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees theeof. An interruption of commerce or an interruption of the operations of the plaintiffs by strike or stoppage, called, led or participated in by defendants pending final and ultimate decision by the National Railroad Adjustment Board would constitute a violation of said public policy. The purpose of the strike threatened by defendants is to force the River Road, by the use of self-help by defendants and the employees represented by them, to settle grievances or claims for compensation without submitting such grievances or claims to the National Railroad Adjustment Board, all of which is contrary to law.

5. Defendants and each of them by their threatened actions are in violation of the Railway Labor Act. The defendants and each of them have failed to exhaust remedies available to them under the Railway Labor Act for the handling and final disposition of the above claims.

6. This cause does not involve a labor dispute within the meaning of the Norris-LaGuardia Act (29 U. S. C. 101 *et seq.*) and this Court has not been deprived of jurisdiction to grant the relief requested herein.

7. Even if this cause did involve a labor dispute within the meaning of the Norris-LaGuardia Act, this Court has jurisdiction to enjoin the threatened acts for the purpose of enforcing the mandatory provisions of the Railway Labor Act.

8. Plaintiffs have no adequate remedies at law and will suffer irreparable harm and injury unless awarded injunctive relief. The equity powers of this Court are adequate to afford the relief sought herein and should be exercised in these circumstances.

9. A permanent injunction should be issued enjoining defendants, their agents, servants, and all acting by, through, or for them, or on their behalf, from conducting any strike, stoppage, or other active economic coercion to force or coerce the River Road into settling the claims, grievances and disputes herein referred to which have been filed with the National Railroad Adjustment Board.

ENTER:

WIN G. KNOCH,
United States District Judge.

March 15, 1956.

IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—54-C-1024)

PERMANENT INJUNCTION.

This matter coming on to be heard, and the Court having considered the verified Amended Complaint heretofore filed in this case, the defendants' answer and motion to dismiss, plaintiffs' motions with affidavits attached, and the arguments of counsel and the entire record herein, and the Court having made findings of fact and conclusions of law,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants, members of defendants' organization and its officers, their agents, servants, employees and attorneys, and all persons including all yardmen, yard foremen and switchmen employed by the Chicago River and Indiana Railroad Company on its railroad, and any persons in active concert and participation with them, and all persons acting by, with, through and under them, or by or through their order, be and they are hereby enjoined from, in connection with the grievances now pending in the National Railroad Adjustment Board:

1. Calling, ordering, authorizing, encouraging, inducing, approving, continuing, starting or permitting any strike or collective work stoppage on that plaintiff's railroad.

2. Picketing or bannering any of the premises on which that plaintiff conducts its railroad operations.

3. Interfering with ingress to or egress from said premises.

4. Interfering in any manner with the delivery, loading, unloading, dispatch or movement of any of that plaintiff's rolling stock, engines, cars, equipment or trains or any of the contents thereof.

5. In any manner interfering with or inducing or endeavoring to induce any person employed by that plaintiff from performing his work and duties and from in any manner endeavoring to induce any such employee to desist therefrom.

Nothing herein shall be construed to require an individual employee to render labor or service without his consent, nor shall anything herein be construed to make the quitting of his labor by an individual employee an illegal act.

ENTER:

WIN G. KNOCH,
United States District Judge.

APPENDIX IV.

Brotherhood of Railroad Trainmen v. Chicago River and Indiana Railroad Co., et al., No. 11745, United States Court of Appeals for Seventh Circuit, entered May 17, 1956:

Upon the motion of defendants-appellants that this cause be docketed upon the transcript of record heretofore filed and printed in the above-mentioned cause No. 11474 and upon the additional transcript of record filed in this cause No. 11745, and that it may be considered and decided upon briefs, oral arguments, petition for rehearing and answer to petition for rehearing filed in cause No. 11474, which motion is supported by stipulation signed by both defendants-appellants and plaintiffs-appellees, and it appearing that, following our reversal in case No. 11474 of the district court's order dismissing the above entitled suit and for remandment, said district court proceeded upon remandment and rendered findings of fact, conclusions of law, and

a judgment for injunction in accordance with the views expressed in this court's opinion in No. 11474, and that the defendants-appellants have saved but two of the questions originally raised by the proceedings below, waiving all other questions of fact or law, to wit:

"(1) Was it the Congressional intent of the National Railway Labor Act to prohibit the threatened strike involved in this case which concededly, if accomplished, would have involved only demands with respect to 'minor grievances'?'

(2) If the National Railway Labor Act was intended to prohibit the above-mentioned threatened strike, did it so far repeal the Norris-LaGuardia Act as to authorize or compel the District Court to grant an injunction?"

And it further appearing that all of the parties hereto represent to this court that they have no arguments to present other than those presented in No. 11474, but that defendants-appellants ask this court to reconsider and rescind its former holding, and the court being fully advised on the premises, IT IS ORDERED, ADJUDGED AND DECREED that this court refuses to reconsider and rescind its former holding in No. 11474, and hereby adheres to said holding. The court finds that the district court, upon remandment, proceeded in accordance with the order of remandment, and that no error occurred in the proceedings below upon remandment.

Accordingly, IT IS ORDERED, ADJUDGED AND DECREED that the judgment of the district court, of March 15, 1956, from which this appeal was taken, be and the same is hereby affirmed.

IT IS FURTHER ORDERED that pursuant to the stipulation of the parties hereto, there shall be filed in this appeal No. 11745, in addition to the transcript of record now on file therein, the transcript of record heretofore filed in case No. 11474.